



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
February 5, 2014**

**TO:** Mayor and City Council

**FROM:** Anna Gwyn Simpson, Interim City Manager

**PREPARED BY:** Corey Simon, Senior Planner

**SUBJECT:** Public hearing to review proposed resolution to amend the General Plan text to the 2007-2014 Housing Element, adjusting permitted locations for emergency homeless shelters; and introduce an ordinance amending the zoning text to the Martinez Municipal Code; and find that the adoption of the proposed General Plan amendment and ordinance are exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301, 15305 and Section 15061(b)(3).

**DATE:** January 29, 2014

**RECOMMENDATION:**

Staff recommends that the City Council conduct a public hearing to consider the Planning Commission's unanimous recommendation to:

- A. Resolution approving a CEQA exemption and making findings related thereto in accordance with CEQA Guidelines Sections 15301, 15305, and 15061(B)(3) and adopting General Plan text amendments to the 2007-2014 Housing Element relating to the location of emergency shelters; and
- B. Introduce an Ordinance amending the Martinez Municipal CODE Chapters 22.04 (Definitions), 22.12 (Permitted Uses and Conditional Uses – R- Residential Districts), 22.16 (Permitted Uses – SC-Service Commercial and Conditional Uses C-Commercial Districts), 22.18 (Li- Light Industrial District Permitted Uses), Section 22.34.010 (General Requirements and Exceptions – Purpose), Section 22.36.070 (Parking Miscellaneous Use Table), and adding Sections 22.34.230 (Homeless Shelters), 22.34.240 (Reasonable Accommodation) and Chapter 22.57 (Density Bonus) to provide regulations implementing State Housing Law Relating to Permitting of Emergency Shelters, Supportive and Transitional Housing, providing Reasonable Accommodation, and adopting Density Bonus Regulations and finding that the adoption of the Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15301, 15305, and 15061(B)(3).

## **BACKGROUND:**

By State law, all California cities and counties are required to have, and periodically update, a Housing Element in their General Plans. Each Housing Element is required to establish housing objectives, policies and programs that the local jurisdiction will act upon to facilitate the provision of housing to meet the identified housing needs of all income levels. Although Housing Elements are adopted by the local jurisdictions, their mandate is statewide and regional in nature, emphasizing the provision of “decent housing and a suitable living environment” for those with relatively lower incomes and for other “disadvantaged” populations (e.g. those with special needs, such as disabilities). For our region, the Association of Bay Area Governments (ABAG) established the Regional Housing Needs Allocation (RHNA) numbers, which are used for every 7½ year long “*Housing Element Cycle*” to distribute a State mandated “fair share” of needed housing to each of the jurisdiction within the region. Since the State acknowledges that it is the private profit and non-profit developers who must actually provide the housing, the Housing Element’s main function is only to assure that the land use policies and regulations in place would both allow and engender for such “fair share” units, should such developers apply to build them. In addition, the California Department of Housing and Community Development (HCD) places additional requirements, pursuant to State legislation, of programs that cities and counties must include in each *Housing Element Cycle*. In order for HCD to “certify” a Housing Element, such Housing Element programs, as further discussed below, are required for cities and counties to receive their share of transportation and other funding from the State.

### Mandates from completed 4<sup>th</sup> Cycle Housing Element 2007-2014 (Senate Bill 2, 2007)

- Adopted program and action plan for changes to zoning regulation, establishing zoning districts where emergency shelters for the homeless will be permitted uses (i.e. not subject to use permit review, but may be subject to a set of objective standards).
- Adopted program and action plan for amending residential zones to specifically allow transitional and supportive housing, as required by State law, so they are treated as a residential use that will be subject only to the same restrictions that apply to other residential uses of the same type in the same zone
- Adopted program and action plan for establishing internal review procedures or ordinance to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing.

### Mandates from pending 5<sup>th</sup> Cycle Housing Element 2014-2022 (Senate Bill 375, 2008)

The *Sustainable Communities and Climate Protection Act* of 2008, also known as Senate Bill 375, is a State law requiring (ostensibly for the purpose of targeting vehicular greenhouse gas emissions) that each of State’s Metropolitan Planning Organizations for each region develop a “Sustainable Communities Strategy” (SCS) that integrates transportation, land-use and housing policies to plan for achievement of the emissions target for the region. For our region, the San Francisco Bay Area Metropolitan Transportation Commission (MTC) and ABAG developed the “One Bay Area” Plan, a 25-year transportation, land use and housing plan that was adopted in summer 2013.

But in addition to mandating regional planning, Senate Bill 375 placed new requirements on cities and counties for the 5<sup>th</sup> Housing Element Cycle by linking the adoption of mandated housing programs and zoning changes to the cities' and counties' ability to certify future housing elements and possibly, to streamline the process with HCD. To remain in compliance and participate in HCD's streamlines process, the following must be completed prior to January 31, 2015:

- Rezones from 4th Cycle [*none required for Martinez*]
- Zoning for Emergency Shelters (implementing in current Housing Element)
- Zoning for Transitional and Supportive Housing (implementing in current Housing Element)
- Reasonable Accommodation Ordinance Adopted (implementing in current Housing Element)
- Density Bonus Ordinance Adopted (implementing in past and current Housing Elements)

If a city or county does not comply with the above, they will be required to revise their Housing Element every four years. It is therefore in the City's interest to adopt the above, knowing that State law already mandates these programs, even if the city and county fails to act. The Planning Commission considered a draft of the proposed regulations at a special meeting on January 21, 2014 and ultimately unanimously recommending adoption of the draft General Plan amendment and zoning text amendments.

### **STAFF ANALYSIS:**

#### **Topic 1: General Plan and Zoning Amendments for EMERGENCY SHELTERS**

As was required for the 4<sup>th</sup> Housing Element Cycle, the City did adopt a program and action plan for changing the zoning regulation, planning to allow emergency shelters for the homeless as permitted uses in the NC (Neighborhood Commercial) and R-1.5 (Residential Multi-family, 1,500 sq. ft. site area per dwelling unit) districts, in sites located "*within one-quarter mile of transit (i.e. bus) stop.*" In preparing and evaluating the draft ordinance to implement this action plan, two problems became apparent:

- No actual buildings/tenant spaces would likely be suitable in the NC & R-1.5 Districts. Since the intent of allowing Emergency Shelters as a permitted use is to provide a ready supply of large vacant buildings that could serve that function, a cursory review of possible structures in the NC and R-1.5 found that the chance of finding a vacant space in the intended 10,000 – 20,000 sq. ft. range, that could then be affordably leased and retrofitted, was nonexistent. Even if vacant space could be found, relative high lease values to space in the neighborhood commercial districts would discourage such uses.
- Requiring possible site to be "*within one-quarter mile of transit stop*" is not consistent with the intent of SB 2. State law intended for cities and counties to place few limitations on the opening of Emergency Shelters, other than a) requiring that the location be within one or more specific zoning district(s) and b) the adoption of objective standards that can be administratively applied in a way similar to the "by right" approach now used to permit Secondary Housing (i.e. "granny") units. Only criteria permitted by SB 2 is listed below:
  - a. Maximum number of beds;
  - b. Off-street parking based upon demonstrated need;
  - c. Size and location of on-site waiting and intake areas;

- d. Provision of on-site management;
- e. Proximity to other shelters;
- f. Length of stay;
- g. Lighting; and
- h. Security during hours when the shelter is open.

#### OVERVIEW OF *CURRENTLY PROPOSED* GENERAL PLAN AND ZONING AMENDMENTS FOR *EMERGENCY AND HOMELESS SHELTERS*:

- The SC (Service Commercial) and LI (Light Industrial) Districts are to replace the previously planned NC (Neighborhood Commercial) and R-1.5 (Residential Multi-family, 1,500 sq. ft. site area per dwelling unit) Districts. The newly proposed Districts are preferred in that: a) there are a greater number of possibly leasable buildings and /or tenant spaces and b) possible concerns from neighboring residents and or business will be reduced (see Attachment 3 - *Planning Commission Resolution, Exhibit B*).
- The limitation requiring that a possible Emergency Shelter be located “*within one-quarter mile of transit stop*” is to be removed from the General Plan, to comply with SB 2 (see Attachment 3 - *Planning Commission Resolution, Exhibit C*).
- The proposed zoning code development standards (as allowed by SB 2) can be found in Attachment 3 - *Planning Commission Resolution, Exhibit C*. The proposed regulations also create provisions to allow non-emergency homeless shelters, integral to existing church facilities, subject to use permit approval.

#### **Topic 2: Zoning Amendments for TRANSITIONAL AND SUPPORTIVE HOUSING**

California Government Code Section 65583(a)(5) requires that transitional and supportive housing shall be considered a residential use of the property and shall be subject only to those restrictions that apply to other residential uses and dwelling types of the same type and in the same zone. The City’s 4<sup>th</sup> Cycle Housing Element contains Implementing Program 23, which specifies enacting zoning for transitional and supportive housing as required by State law. The proposed zoning code definitions that will be used to allow “transitional” and “supportive” housing as permitted uses in all R- Residential Districts can be found in Attachment 3 - *Planning Commission Resolution, Exhibit C*.

#### **Topic 3: Zoning Amendments for REASONABLE ACCOMMODATIONS**

The Federal Fair Housing Act (42 U.S.C. Section 3601) and California Fair Employment and Housing Act (Government Code Section 12926 and 12955) impose an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their land use regulations and practices when such accommodation may be necessary to afford disabled persons an equal opportunity to housing. Implementing Program 24 of the City’s 4<sup>th</sup> Cycle Housing Element provides adoption procedures for reasonable accommodation for persons with disabilities. A typical example of this would be to provide a process where a requested accommodation to minimum yard requirements might be granted to allow an access ramp in the front yard. The proposed zoning code definitions and regulations can be found in Attachment 3 - *Planning Commission Resolution, Exhibit C*.

#### **Topic 4: Zoning Amendments for DENSITY BONUS for AFFORDABLE HOUSING**

In 2005, the State of California enacted changes to the State's density bonus law, Government Code Section 65915, which requires that cities and counties provide for mandated density bonuses, incentives and concessions for affordable housing developments in a quantity, form, and manner that satisfy the criteria contained in Government Code Section 65915-65918. Policy 3.5 of the City's 4<sup>th</sup> Cycle Housing Element addresses the State's density bonus law, in that density bonuses should be provided to projects according to requirements of State law. While the City of Martinez has not formally adopted the density bonus regulations within its own code, the City has been legally bound to offer these incentives since 2005, and the State's mandated formula was recently implemented to aide in the development of Berrellesa Palms Senior Housing, an affordable housing development, currently under construction.

The proposed regulations for the State mandated density bonus process development standards can be found in Attachment 3 - *Planning Commission Resolution, Exhibit C*. As many cities have done to respond to this State requirement, Martinez's proposed code does not contain the actual formulas for calculating the density bonus – it merely refers to the State Law, which is subject to change in the future. By referring to the State code, the City's code will always be current with State law. For additional reference, the current State code on Density Bonus is also attached.

#### **FISCAL IMPACT:**

There is no fiscal impact associated with this action.

#### **ACTION:**

- A Resolution approving a CEQA exemption and making findings related thereto in accordance with CEQA Guidelines Sections 15301, 15305, and 15061(B)(3) and adopting General Plan text amendments to the 2007-2014 Housing Element relating to the location of emergency shelters; and
- B. Introduce an Ordinance amending the Martinez Municipal CODE Chapters 22.04 (Definitions), 22.12 (Permitted Uses and Conditional Uses – R- Residential Districts), 22.16 (Permitted Uses – SC-Service Commercial and Conditional Uses C-Commercial Districts), 22.18 (Li- Light Industrial District Permitted Uses), Section 22.34.010 (General Requirements and Exceptions – Purpose), Section 22.36.070 (Parking Miscellaneous Use Table), and adding Sections 22.34.230 (Homeless Shelters), 22.34.240 (Reasonable Accommodation) and Chapter 22.57 (Density Bonus) to provide regulations implementing State Housing Law Relating to Permitting of Emergency Shelters, Supportive and Transitional Housing, providing Reasonable Accommodation, and adopting Density Bonus Regulations and finding that the adoption of the Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15301, 15305, and 15061(B)(3).

Attachments

1. Draft Resolution, with findings
2. Draft Ordinance, with findings
3. Planning Commission Resolution, with findings and exhibits A-C
4. California Government Code Sections 65915 through 65918 (State Density Bonus Law)

**APPROVED BY:**

  
Interim City Manager

RESOLUTION NO. -14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ,  
APPROVING A CEQA EXEMPTION AND MAKING FINDINGS RELATED THERETO IN  
ACCORDANCE WITH CEQA GUIDELINES SECTIONS 15301, 15305, AND  
15061(B)(3) AND  
ADOPTING GENERAL PLAN TEXT AMENDMENTS TO THE 2007-2014 HOUSING  
ELEMENT RELATING TO THE LOCATION OF EMERGENCY SHELTERS

**WHEREAS**, the California State Legislature passed Senate Bill 2 in 2007 for local planning and approval of emergency shelters and transitional and supportive housing; and

**WHEREAS**, California Government Code Section 65583(a)(4) requires the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, and the identified zone or zones shall include sufficient capacity to accommodate the local need for emergency shelters; and

**WHEREAS**, eligibility for the streamlined update of the 5th Housing Element Cycle for the California Department of Housing and Community Development necessitates amendments to the general plan and zoning text for compliance with the above State and Federal housing laws; and

**WHEREAS**, general plan text amendments to the 2007-2014 Housing Element would adjust permitted locations for emergency homeless shelters to include areas that would be able to be adaptively reused for emergency shelter use; and

**WHEREAS**, the Planning Commission held a duly notice public hearing on December 10, 2013, and did, at the conclusion of said Public Hearing, adopt Resolution PC 14-02, recommending that the City Council adopt a CEQA Exemption and the proposed General Plan and Zoning amendments; and

**WHEREAS**, notice of the Public Hearing of the City Council was sent in accordance with law on January 23, 2014; and

**WHEREAS**, the City Council held a Public Hearing on February 5, 2014, and did consider the action of the Planning Commission, the staff reports, the proposed categorical exemption from CEQA, all written and oral comments made before or at the hearings on the matter and the Record as a whole prior to taking any action on the proposed amendments; and

**WHEREAS**, The Record of Proceedings ("Record") upon which the City Council bases its decision regarding the proposed amendments includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, the City Council and the City relating to the proposed amendments; (2) the evidence, facts, findings and other determinations set forth in the Planning Commission Resolution and this City Council resolution; (3) the City of Martinez General Plan, the 2006 Downtown Specific Plan and related EIRs and the Martinez Municipal Code; (4) all documentary and oral evidence received at public hearings or submitted to the City prior to the public hearings relating to the proposed amendments; (5) all other matters of common knowledge to the City Council including, but not limited to, City, State and Federal laws, policies, rules regulations, reports, records and projections related to the subject matter of this ordinance; and

**WHEREAS**, the Custodian of Records in the City Clerk of the City of Martinez, 525 Henrietta Street, Martinez, CA.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council hereby finds that the General Plan amendments set forth herein are is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Sections 15061(B)(3), 15301 and 15305. The proposed General Plan Amendment establishes regulations for emergency shelters in accordance with and to implement the requirements of state law. Emergency homeless shelters would generally be expected to utilize existing facilities such as larger scale warehouse type of buildings, with no new construction likely to occur. Any new construction would be subject to standard building and zoning regulations existent for other structures in the same zoning district and of the same size and all emergency shelter uses would be subject to size and operational regulations as set forth in the zoning ordinance amendments adopted concurrently herewith which provisions are designed to prevent impacts to surrounding properties. In addition, pursuant to existing City regulations, emergency shelters can locate within the districts contemplated by this ordinance with a use permit. The proposed ordinance imposes regulations and operational requirements which would otherwise be included in use permit conditions. It can therefore be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. There are no unusual circumstances surrounding these regulations or the properties to which they would apply which would result in a reasonable possibility that the activity would have a significant effect on the environment. No project is proposed for a site subject to listing in accordance with Section 65962.5 of the California Government Code, located within a flood plain, or a state scenic highway or which could affect an historic

resource.

**BE IT FURTHER RESOLVED** that the City Council hereby finds that the proposed General Plan amendments are internally consistent with the General Plan, and are consistent with applicable Specific Plans and the City of Martinez Zoning ordinance as set forth in Exhibit A, attached hereto and incorporated herein by reference; and

**BE IT FURTHER RESOLVED** that the City Council hereby adopts the General Plan amendments to the 2007-2014 Housing Element adjusting permitted locations for emergency homeless shelters, as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 5<sup>th</sup> day of February, 2014, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**EXHIBIT A**  
CITY COUNCIL RESOLUTION NO. -14

**GENERAL PLAN – HOUSING ELEMENT –**  
**CONSISTENCY FINDINGS**

**FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN**

*The proposed General Plan and Zoning text amendments are consistent with the policies of the Martinez General Plan, Housing Element and Downtown Specific Plan, components thereof, including, but not limited to the following:*

21.341 - Land Use Element, Residential Uses, High Density Residential Areas: **High density residential development...shall be permitted in limited areas. The primary purpose is provision for apartment types of housing accommodations to serve the needs of single persons, families with preschool children and childless households.**

Facts in Support: The Zoning text amendments allow for density bonus for affordable housing, which will improve the financial viability for affordable high density residential development, providing added housing opportunities for single persons, families, seniors, and low-income households.

LU-1-4 - Downtown Specific Area Plan Policy: **Provide incentives for infill development throughout Downtown, with an emphasis on the opportunity sites identified in this Plan.**

Facts in Support: The Zoning text amendments will promote infill development in Downtown. Many of the opportunity sites identified in the Downtown Specific Plan are suited towards higher density residential that may qualify for density bonuses and incentives.

3.5 - Housing Element Policy: **State Density Bonus Law. Provide density bonuses to projects according to the requirements of State law.**

Facts in Support: Through the implementation of the Zoning text amendments, projects that qualify for density bonuses will be provided density bonuses in accordance with California Government Code Section 65915-65918.

3.8 - Housing Element Policy: **Emergency Shelter and Disaster Preparedness Housing. Identify emergency housing needs and locations as part of the City's disaster preparedness planning.**

**EXHIBIT B**  
CITY COUNCIL RESOLUTION NO. -14

**Housing Element Amendments**  
**IMPLEMENTING 4TH CYCLE HOUSING ELEMENT**  
(Emergency Shelters)

**AMEND POLICY 3.12 (page 41) AS FOLLOWS:**

- 3.1 **Housing for the Homeless.** The City of Martinez recognizes the need for and desirability of emergency shelter housing for the homeless and will allow emergency shelters as a permitted use within the ~~NC SC (Neighborhood Service Commercial), CC (Central Commercial), and R-1.5 (High density residential)~~ **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where the property is located within one quarter mile of a transit stop, since this could be considered a reasonable distance for a person to walk to/from a transit stop to/from a facility.~~ In addition, the Housing Element recommends the following:
- a. That a use permit be required if a property containing a religious facility wants to open a permanent, year-round shelter.
  - b. The City will encourage a dispersion of facilities to avoid an over-concentration of shelters for the homeless in any given area. An over-concentration of such facilities may negatively impact the neighborhood in which they are located and interfere with the “normalization process” for clients residing in such facilities.
  - c. Support a “housing first” policy that promotes long-term housing solutions for homeless individuals and families in Contra Costa County.
  - d. The City will encourage positive relations between neighborhoods and providers of permanent or temporary emergency shelters. Providers or sponsors of emergency shelters, transitional housing programs and community care facilities shall be encouraged to establish outreach programs within their neighborhoods and, when necessary, work with the City or a designated agency to resolve disputes.
  - e. It is recommended that a staff person from the provider agency be designated as a contact person with the community to review questions or comments from the neighborhood. Outreach programs may also designate a member of the local neighborhood to their Board of Directors. Neighbors of emergency shelters shall be encouraged to provide a neighborly and hospitable environment for such facilities and their residents.
  - f. Development standards for emergency shelters for the homeless located in Martinez will ensure that shelters would be developed in a manner which protects the health, safety and general welfare of nearby residents and businesses, while providing for

the needs of a segment of the population as required by State law. Shelters shall be subject only to development, design review and management standards that apply to ~~residential~~ **industrial** or commercial development in the same zone, except for the specific written and objective standards as allowed in State law.

**AMEND IMPLEMENTING PROGRAM 22 (page 46) AS FOLLOWS:**

22 **Enact Zoning for Emergency Shelter for the Homeless.** The City will establish zoning to allow emergency shelters for the homeless as a permitted use within the ~~NC-SC (Neighborhood Service Commercial), CC (Central Commercial), and R-1.5 (High-density residential)~~ **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where the property is located within one quarter mile of a transit stop.~~ Zoning will also be established to allow religious facilities to open a permanent, year-round shelter with a use permit. In addition, the City will establish written and objective standards, as allowed in State law, for the following:

- (1) Maximum number of beds;
- (2) Off-street parking based upon demonstrated need;
- (3) Size and location of on-site waiting and intake areas;
- (4) Provision of on-site management;
- (5) Proximity to other shelters;
- (6) Length of stay;
- (7) Lighting; and
- (8) Security during hours when the shelter is open.

*Responsibility:* Community and Economic Development Department; City Attorney; Planning Commission; City Council

*Timing:* 2010

*Funding:* General Fund

*Target:* Zoning Ordinance amendment.

**AMEND CURRENT HOUSING CONDITIONS AND TRENDS, Section C - Homeless (page 84) AS FOLLOWS:**

The approach recommended in the Housing Element is for the City to designate locations within the ~~NC-SC (Neighborhood Service Commercial), CC (Central Commercial), and R-1.5 (High-density residential)~~ **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where emergency shelters for the homeless are allowed "by right." It is also recommended that any property must be located within a one quarter mile of a transit stop, since this could be considered a reasonable distance for a person to walk to/from a transit stop to/from a facility.~~ In addition, the Housing Element recommends that if a property containing a religious facility wants to open a permanent, year-round shelter that a use permit be required.

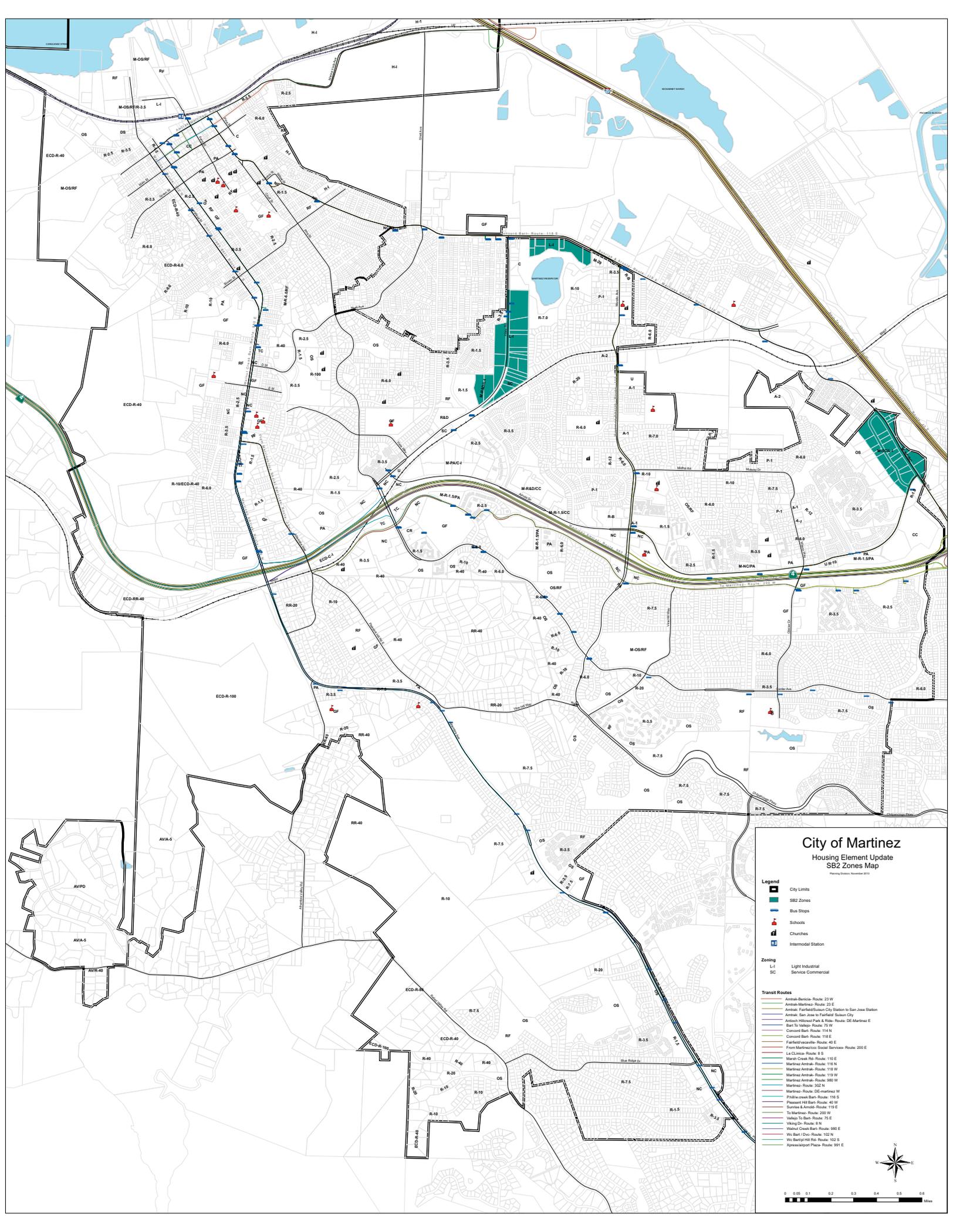
Under the proposed zoning designation under the criteria described above, a total of **approximately 86** ~~274~~ acres of land in the City of Martinez would qualify as allowing an emergency shelter for the homeless as a use allowed "by right," and not subject to discretionary review. Parcel sizes ranges from **approximately** ~~smaller parcels (generally~~ 0.25 – 0.70 acres in

size) to larger parcels ( up to **6.5** ~~13.0~~ acres in size). The area designated provides sufficient opportunity for a facility for the homeless to be built **or adaptively rebuilt** in compliance with SB2 requirements.

The map below shows potential locations ~~within one-quarter mile of a transit stop~~ where an emergency shelter could be allowed without a conditional use permit or other discretionary action. The identified locations have a realistic potential for redevelopment or reuse, and have access to transportation and services. As part of the rezoning action, the City will establish written and objective standards, as allowed in State law, covering:

- Maximum number of beds
- Off-street parking based upon demonstrated need
- Size and location of on-site waiting and intake areas
- Provision of on-site management
- Proximity to other shelters
- Length of stay
- Lighting
- Security during hours when the shelter is open

\* \* \*



# City of Martinez

## Housing Element Update

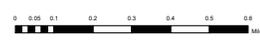
### SB2 Zones Map

Planning Division November 2015

- Legend**
- City Limits
  - SB2 Zones
  - Bus Stops
  - Schools
  - Churches
  - Intermodal Station

- Zoning**
- L1 Light Industrial
  - SC Service Commercial

- Transit Routes**
- Amtrak-Berkeley - Route 23 W
  - Amtrak-Martinez - Route 23 E
  - Amtrak - Fairfield/Suisun City Station to San Jose Station
  - Amtrak - San Jose to Fairfield Station City
  - Antioch Hillcrest Park & Ride - Route DE-Martinez E
  - San Jo Valley - Route 75 W
  - Concord Park - Route 114 N
  - Concord Park - Route 116 E
  - Fairfield/Vacaville - Route 40 E
  - From Martinez: Social Services - Route 200 E
  - La Clava - Route 8 S
  - Martinez Creek Rd - Route 110 E
  - Martinez Amtrak - Route 118 N
  - Martinez Amtrak - Route 118 W
  - Martinez Amtrak - Route 110 W
  - Martinez Amtrak - Route 985 W
  - Martinez - Route 302 N
  - Martinez - Route DE-emeritus W
  - Philwreck Park - Route 116 S
  - Philwreck Park - Route 40 W
  - Philwreck Park - Route 119 E
  - Philwreck Park - Route 119 E
  - To Martinez - Route 200 W
  - Village To Park - Route 75 E
  - Village Dr - Route 8 N
  - Water Creek Park - Route 980 E
  - Wilco Bar - Route 102 N
  - Wilco Bar - Route 102 S
  - Wilco Bar - Route 991 E



ORDINANCE NO. C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING MARTINEZ MUNICIPAL CODE CHAPTERS 22.04(DEFINITIONS), 22.12 (PERMITTED USES AND CONDITIONAL USES - R- RESIDENTIAL DISTRICTS), 22.16 (PERMITTED USES - SC-SERVICE COMMERCIAL AND CONDITIONAL USES C-COMMERCIAL DISTRICTS), 22.18 (LI- LIGHT INDUSTRIAL DISTRICT PERMITTED USES), SECTION 22.34.010 (GENERAL REQUIREMENTS AND EXCEPTIONS - PURPOSE), SECTION 22.36.070 (PARKING MISCELLANEOUS USE TABLE), AND ADDING SECTIONS 22.34.230 (HOMELESS SHELTERS), 22.34.240 (REASONABLE ACCOMMODATION) AND CHAPTER 22.57 (DENSITY BONUS) TO PROVIDE REGULATIONS IMPLEMENTING STATE HOUSING LAW RELATING TO PERMITTING OF EMERGENCY SHELTERS, SUPPORTIVE AND TRANSITIONAL HOUSING, PROVIDING REASONABLE ACCOMODATION, AND ADOPTING DENSITY BONUS REGULATIONS AND FINDING THAT THE ADOPTION OF THE ORDINANCE IS EXEMPT FROM THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), PURSUANT TO CEQA GUIDELINES SECTIONS 15301, 15305, AND 15061(B)(3).

**FINDINGS:** The City Council of the City of Martinez makes the following findings:

In 2005 the State of California enacted changes to the State's density bonus law, Government Code Section 65915 which requires that cities and counties provide for mandated density bonuses, incentives and concessions for affordable housing developments in a quantity, form, and manner that satisfy the criteria contained in Government Code Section 65915-65918; and

The California State Legislature passed Senate Bill 2 in 2007 for local planning and approval of emergency shelters and transitional and supportive housing; and

California Government Code Section 65583(a)(4) requires the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, and the identified zone or zones shall include sufficient capacity to accommodate the local need for emergency shelters; and

California Government Code Section 65583(a)(5) requires that transitional and supportive housing shall be considered a residential use of the property and shall be subject only to those restrictions that apply to other residential uses and dwellings types of the same type and in the same zone; and

The Federal Fair Housing Act (42 U.S.C. Section 3601) and California Fair Employment and Housing Act (Government Code Section 12926 and 12955) impose an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their land use regulations and practices when such accommodation may be necessary to afford disabled persons an equal opportunity to housing; and

Eligibility for the streamlined update of the 5th Housing Element Cycle for the California Department of Housing and Community Development necessitates amendments to the general plan and zoning text for compliance with the above State and Federal housing laws; and

General plan text amendments to the 2007-2014 Housing Element would adjust permitted locations for emergency homeless shelters to include areas that would be able to be adaptively reused for emergency shelter use; and

The proposed zoning text amendments are intended to fulfill the City's obligation under Goal 3 and Implementing Programs 18, 22, 23, and 24 of the City's 2007-2014 Housing Element; and

On January 2, 2014, the City of Martinez Planning Commission held a duly noticed public hearing to consider the proposed amendments and did consider all staff reports, all written and oral communication submitted to the City on or before such public hearing, and the Record as a whole and did by the adoption of Resolution NO.PC 14-02, recommend that the City Council adopt the proposed amendments and find same exempt from the provisions of CEQA as set forth in the Planning Commission Resolution; and

Notices of the Public Hearing of the City Council on the proposed amendments were sent and published in accordance with law; and

On February 5, 2014, the City Council of the City of Martinez did hold a Public Hearing on said proposed amendments and on the General Plan Amendments to the Housing Element proposed concurrently herewith and did consider all staff reports, all written and oral communication submitted to the City on or before such public hearing, the Planning Commission recommendation, CEQA documentation and exemption and the Record as a whole prior to taking action on the proposed amendments; and

By the adoption of a separate Resolution, of even date herewith, the City Council did approve the proposed General Plan amendments to the Housing Element to provide for the location of Emergency Shelters in the City; and

The Custodian of Records in the City Clerk of the City of Martinez, 525 Henrietta Street, Martinez, CA.

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

**SECTION 1. Record of Proceedings.**

The Record of Proceedings ("Record") upon which the City Council bases its decision regarding the proposed amendments includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission, the City Council and the City relating to the proposed amendments; (2) the evidence, facts, findings and other determinations set forth in the Planning Commission Resolution and this ordinance; (3) the City of Martinez General Plan, the 2006 Downtown Specific Plan and related EIRs and the Martinez Municipal Code; (4) all documentary and oral evidence received at public hearings or submitted to the City prior to the public hearings relating to the proposed amendments; (5) all other matters of common knowledge to the City Council including, but not limited to, City, State and Federal laws, policies, rules regulations, reports, records and projections related to the subject matter of this ordinance.

**SECTION 2. CEQA Findings.** The City Council finds that the adoption of the proposed ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14, Chapter 3, California Code of Regulations (CEQA Guidelines), Sections 15061(B)(3), 15301 and 15305. The proposed ordinance establishes regulations for emergency shelters, transitional and supportive housing, reasonable accommodations, and density bonus regulations in accordance with and to implement the requirements of state law. Emergency homeless shelters would generally be expected to utilize existing facilities such as larger scale warehouse type of buildings, with no new construction likely to occur. Any new construction would be subject to standard building and zoning regulations existent for other structures in the same zoning district and of the same size and all emergency shelter uses would be subject to size and operational regulations as set forth in the zoning ordinance amendments adopted concurrently herewith which provisions are designed to prevent impacts to

surrounding properties. State and federal law already require that the City provide a density bonus and make reasonable accommodation in the application of regulations for those with disabilities. In addition, pursuant to existing City regulations, emergency shelters can locate within the districts contemplated by this ordinance with a use permit. The proposed ordinance imposes regulations and operational requirements which would otherwise be included in use permit conditions. Transitional and supportive housing are not currently distinguished in the zoning ordinance from other types of housing and the proposed regulations adopted herein merely provide clarification of that fact. It can therefore be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. There are no unusual circumstances surrounding these regulations or the properties to which they would apply which would result in a reasonable possibility that the activity would have a significant effect on the environment. No project is proposed for a site subject to listing in accordance with Section 65962.5 of the California Government Code, located within a flood plain, or a state scenic highway or which could affect an historic resource.

**SECTION 3.**        **General Plan Consistency Findings.**    The City Council hereby finds that the proposed zoning amendments are consistent with the General Plan and applicable Specific Plans as set forth in Exhibit A, attached hereto and incorporated herein by reference.

**SECTION 4.**        Section 22.04.125 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.125 Disabled Person(s).** "Disabled Person(s)" means a person who has a medical, physical, or mental impairment or condition that substantially limits one or more major life activities, as those terms are defined in the California Government Code Section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or persons, or an authorized representative of a disabled person. The term disabled persons does not include a person who is currently using illegal substances, unless he or she has a separate disability.

**SECTION 5.**        Section 22.04.165 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.165 Fair Housing Laws.** "Fair Housing Laws" means the Federal Fair Housing Act (42 United States Code Section 3601 et. seq.) and the California Fair Employment and Housing Act

(California Government Code Section 12926 and 12955 et. seq.), including amendments there to.

**SECTION 6.** Section 22.04.244 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.244 Homeless Person(s).** "Homeless Person(s)" means an individual who lacks a fixed, regular and adequate nighttime residence; and/or an individual who has a primary nighttime residence that is:

- A. A supervised, publically or privately operated shelter designed to provide temporary living accommodations, including but not limited to emergency shelters, congregate shelters and transitional housing;
- B. An institution that provides a temporary residence for individuals intended to be institutionalized; or
- C. A public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.

**SECTION 7.** Section 22.04.246 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.246 Homeless Shelter, Emergency.** "Homeless Shelter, Emergency" means a residential facility, other than a community care facility, operated by a provider which provides temporary accommodations to persons or families with low income. The term "temporary accommodations" means that a person or family will be allowed to reside at the shelter for a time period not to exceed 180 days. For purpose of this definition, a "provider" shall mean a government agency or private non-profit organization which provides or contracts with recognized community organizations to provide emergency or temporary shelter, and which may also provide meals, counseling and other services, as well as common areas for residents of the facility. Such a facility may have individual rooms, but is not developed with individual dwelling units.

**SECTION 8.** Section 22.04.248 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.248 Homeless Shelter, Ongoing.** "Homeless Shelter, Ongoing" means a program, operated by a religious or eleemosynary institution (with the intent of placing the homeless in permanent dwelling units within 90 days after first occupying the shelter) that provides overnight shelter, two meals a day

and case management services for homeless persons, with no predetermined limitation to length of occupancy.

**SECTION 9.** Sections 22.04.442-447 of the Martinez Municipal Code are hereby renumbered as follows (the text thereof is not changed):

- 22.04.443 - Recreational Vehicle
- 22.04.444 - Recreational Vehicle-Oversized
- 22.04.445 - Residential Congregate Care Facility
- 22.04.446 - Secondary Housing Unit
- 22.04.447 - Secondhand Stores
- 22.04.448 - Sales Floor Area

**SECTION 10.** Section 22.04.442 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.442 Reasonable Accommodation.** "Reasonable Accommodation" means providing disabled persons flexibility or removal of constraints in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened driveways, parking areas or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. Reasonable Accommodation does not include an accommodation which would impose an undue financial or administrative burden on the City, or require a fundamental alteration in the nature of the City's land use and zoning program.

**SECTION 11.** Section 22.04.541 of the Martinez Municipal Code is hereby renumbered as follows (the text thereof is not changed):

- 22.04.543 - Tattoo Parlors

**SECTION 12.** Section 22.04.541 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.541 Supportive Housing.** "Supportive Housing" means housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260 and as per subdivision (b) of Section 50675.14 of the California Health and Safety Code, and that is linked to on- or off-site services that assist 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.

**SECTION 13.** Section 22.04.548 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.548 Transit Stop.** "Transit Stop" means a regularly scheduled bus stop, as posted in a transit agency's most current publication of routes and stops, including but not limited to Central Contra Costa Transit Authority's (CCCTA) "County Connection" bus service.

**SECTION 14.** Section 22.04.549 of the Martinez Municipal Code is hereby added to read as follows:

**22.04.549 Transitional Housing.** "Transitional Housing" and "Transitional Housing Development" means 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 months, per subdivision (h) of Section 50675.2 of the California Health and Safety Code.

**SECTION 15.** Section 22.12.080 - Permitted Uses [in R-Residential Districts] of the Martinez Municipal Code is hereby amended to add subsections L and M to read as follows:

- L. Transitional Housing. Transitional Housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential uses and dwelling types of the same type and in the same zone (e.g. permits single-family dwellings within a single-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa).
  
- M. Supportive Housing. Supportive Housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential uses and dwellings of the same type and in the same zone (e.g. permits single-family dwellings within a single-family

zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa).

**SECTION 16.** Section 22.12.090 -Conditional Uses [in R-Residential Districts]of the Martinez Municipal Code is hereby amended to add subsection O to read as follows:

O. Homeless Shelters, Ongoing. Homeless Shelters, Ongoing, within permitted religious or eleemosynary institutions. In addition to the applicable conditions of Use Permit approval pursuant to 22.40.070, Homeless Shelters, Ongoing, within permitted religious or eleemosynary institution, are subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

**SECTION 17.** Section 22.16.070-Permitted Uses - SC-Service Commercial District of the Martinez Municipal Code is hereby amended to add subsection E to read as follows:

E. Homeless Shelters, Emergency. Homeless Shelters, Emergency, subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

**SECTION 18.** Section 22.16.080- Conditional Uses [in C-Commercial Districts] of the Martinez Municipal Code is hereby amended to add subsection T to read as follows:

T. Homeless Shelters, Ongoing. Homeless Shelters, Ongoing, within permitted religious or eleemosynary institutions. In addition to the applicable conditions of Use Permit approval pursuant to 22.40.070, Homeless Shelters, Ongoing, within permitted religious or eleemosynary institution, are subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

**SECTION 19.** Section 22.18.030- LI- Light Industrial District-- Permitted Uses of the Martinez Municipal Code is hereby amended to add subsection E to read as follows:

E. Homeless Shelters, Emergency. Homeless Shelters, Emergency, subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

**SECTION 20.** Section 22.34.010 of the Martinez Municipal Code is hereby amended to read as follows:

**22.34.010 Purpose**

The general provisions and exceptions are incorporated into the zoning title to provide a listing and explanation of provisions and exceptions which are common to more than one or, all zoning districts. The provisions contained herein are to be considered applicable to all zoning districts unless otherwise indicated, the same as if they were separately included under each zoning district.

**SECTION 21.** Section 22.34.230 of the Martinez Municipal Code is hereby added to read as follows:

**22.34.230 Homeless Shelters**

- A. Homeless Shelters, Emergency may be located within areas of the SC - Service Commercial District or the LI- Light Industrial District, and with the following development and performance standards:
1. On-site management and on-site security shall be provided during all hours when the emergency shelter is in operation at a ratio of one staff member for every 15 persons utilizing the shelter. One office or cubicle intake area per 10 clients shall be maintained. An indoor onsite waiting area of no less than 275 square feet shall be provided.
  2. External lighting shall be provided for security purposes as a minimum average of 3 foot candles at ground level. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible with the surrounding area.
  3. The development may provide one or more of the following specific common facilities for the exclusive use of the residents and staff:
    - a. Central cooking and dining room(s).
    - b. Recreation room.
    - c. Counseling center.
    - d. Child care facilities.
    - e. Other support services.

4. Parking and outdoor facilities shall be designed to provide security for residents, visitors, employees and the surrounding area. On-site parking spaces shall be provided as required by Section 22.36.070.A.11; PARKING - MISCELLANEOUS USE TABLE.
  5. A refuse storage area shall be provided that is completely enclosed with masonry walls not less than five feet high with a solid-gated opening and that is large enough to accommodate a standard-sized trash bin adequate for use on the parcel. The refuse enclosure shall be accessible to refuse collection vehicles.
  6. The agency or organization operating the shelter shall comply with the following requirements:
    - a. Temporary shelter shall be available to residents for no more than 180 days in a calendar year. No individual or household may be denied emergency shelter because of an inability to pay.
    - b. Staff and services shall be provided to assist residents to obtain permanent shelter and income.
    - c. The provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to insure compatibility with services provided at the facility, and for training, counseling, and treatment programs for residents.
  7. No Emergency Homeless Shelter shall be located within three hundred feet of another Emergency Homeless Shelter site.
  8. The facility shall obtain and shall at all times maintain good standing with any and all Federal, State, County and City licenses as required by each such agencies for the owner(s), operator(s), and/or staff on the proposed facility.
  9. The maximum number of beds or clients permitted to be served (eating, showering and/or spending the night) shall not exceed 30 persons.
- B. Homeless Shelters, Ongoing are subject to the same requirements for Emergency Homeless Shelters in Subsection A above, with the exception of 22.34.230.A.9, as maximum occupancy is to be established by Use Permit.

**SECTION 22.** Section 22.34.240 of the Martinez Municipal Code is hereby added to read as follows:

**22.34.240 Reasonable Accommodation**

A. Application. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. Requests for reasonable accommodation shall be submitted with the Planning Application Form (no fee) and with a letter to the Planning Division Director and shall contain the following information:

1. The applicant's name, address and telephone numbers.
2. Address of the property for which the request is being made.
3. The name of the property owner and owner's written consent or signature on Planning Application Form.
4. The current actual use of the property.
5. The basis for the claim that the person(s) is considered disabled under the fair housing laws.
6. The zoning code ordinance provision, regulation or policy from which reasonable accommodation is being requested.
7. Why the reasonable accommodation is necessary to make the specific property accessible to the person(s).
8. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the reasonable accommodation.
9. Other relevant supportive information as requested by the Planning Division Director or his or her designee, consistent with fair housing laws.

B. Decision. Planning Division Director or his or her designee shall render a decision in writing within 30 days after the application is complete, and shall approve, approve with conditions or deny the application based on the findings in Subsection C.

- C. Findings. The Planning Division Director or his or her designee shall approve the application, with or without conditions, if the following findings are made:
1. The housing will be used by a disabled person;
  2. The requested accommodation is necessary to make specific housing available a disabled person;
  3. The requested accommodation would not impose an undue financial or administrative burden on the City; and
  4. The requested accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
- D. Appeal. An appeal of the decision by the Planning Division Director or his or her designee may be made pursuant to the appeal procedures in Section 22.06.050.
- E. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires other discretionary approval (including but not limited to: design review, variance, conditional use permit, rezoning, general plan amendment, etc.), then the applicant shall file the information required by Subsection A together for concurrent review with the application for discretionary approval.

**SECTION 23.** Section 22.36.070 of the Martinez Municipal Code is hereby amended to read as follows:

**22.36.070 - Parking-Miscellaneous Uses.**

- A. For uses other than those listed previously, parking shall be provided in accordance with the following table:

**PARKING-MISCELLANEOUS USE TABLE**

Use and Required Parking Spaces.

1. Parks, playgrounds and other—One per three employees plus additional as prescribed by the Planning Commission.
2. Churches, community centers, private clubs and lodges, auditoriums (including school and college auditoriums), theaters, mortuaries and similar places of public assembly—one per each four seats; if no fixed seats, one space for each 40 square feet.

3. Nursing homes, philanthropic and eleemosynary institutions; religious institutions providing sleeping accommodations—one per five beds.
  4. Hospitals and sanitariums—one per three beds.
  5. Libraries, museums, art galleries, etc.—one per three employees plus additional as prescribed by the Planning Commission.
  6. Colleges, for art, craft, music and dancing schools, business, professional, trade schools and colleges—one per three employees plus one additional per five students.
  7. Public buildings and grounds other than administrative, offices—one per three employees plus additional as prescribed by the Planning Commission.
  8. Public utility structures and installations—one per three employees plus additional as prescribed by the Planning Commission.
  9. Bus depots, transit stations, railroad stations, railroad freight stations and yards, airports and heliports—one per three employees plus additional as prescribed by the Planning Commission.
  10. Cemeteries, columbariums and crematories—one per three employees plus additional as prescribed by the Planning Commission.
  11. Homeless Shelters - one parking space for every five beds.
  12. Other uses not specifically listed above or specific uses which need more parking than the categories listed above, shall furnish parking as required by the Planning Director. In determining the off-street parking requirements for said uses, the Planning Director shall use the above requirements as a general guide and shall determine the minimum number of parking spaces.
- B. The off-Street parking facilities requirements of this Chapter shall be satisfied by the permanent allocation of the prescribed number of spaces for each use in common parking facilities, provided however, that the total number

of spaces shall be not less than the sum of the individual requirements and provided further that an attested copy of a contract between the parties concerned setting forth the agreement to joint use of a common parking facility is filed with the application for a certificate of occupancy

**SECTION 24.** The Martinez Municipal Code is hereby amended to add Chapter 22.57 to read as follows:

**CHAPTER 22.57  
DENSITY BONUS**

**22.57.010 Purpose**

The purpose of this Chapter is to provide for density bonuses and incentives to developers who comply with California Government Code Sections 65915 through 65918 (State Density Bonus Law).

**22.57.020 Definitions.**

Unless otherwise specified in this Chapter, the definitions found in State Density Bonus Law shall apply to the terms contained herein.

**22.57.030 Applicability.**

This Chapter shall apply to all zoning districts that permit housing at a prescribed density by the General Plan Land Use Designation and/or zoning district. Where the density allowed under the zoning district is inconsistent with the density allowed under the General Plan Land Use Designation, the Land Use Designation density shall prevail.

**22.57.040 State Density Bonus and Incentives.**

A developer of a housing development in the City may be permitted a density bonus and incentives in accordance with the provisions of California Government Code Sections 65915 through 65918 (State Density Bonus Law).

**22.57.050 Application Requirements and Review.**

- A. An application for a state density bonus, incentive or concession, waiver or modification of a development standard, or a revised parking standard in accordance with Section 22.57.040, shall be submitted with the first application for approval of a housing development and shall

be processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the City and shall include, at a minimum, the following information:

1. A site plan showing the total number and location of all proposed housing units and the number and location of proposed housing units which qualify the housing development for density bonus housing units.
  2. The manner in which the applicant shall satisfy the affordability requirements for the housing units which qualify the housing development for density bonus units.
  3. A description of any requested incentives and concessions, waivers or modification of development standards, or modified parking standards. For all incentives and concessions, except mixed use development, the application shall include evidence deemed sufficient by the City that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall include evidence deemed sufficient by the City that the waiver or modification is necessary to make the housing units economically feasible and that the development standard from which a waiver or modification is requested will have the effect of precluding the construction of the housing development at the densities to which the applicant is entitled pursuant to this Chapter and with the concessions and incentives permitted by this Chapter.
  4. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions pursuant to Government Code Section 65915 (g)(2)(A through H) are met.
  5. If a density bonus or incentive or concession is requested for a child care facility pursuant to Government Code Section 65915 (h), the application shall show the location and square footage of the child care facility and provide evidence that the community lacks adequate child care facilities.
- B. Review and Consideration. An application for a density bonus, incentive or concession, waiver or modification of a

development standard, or revised parking standard shall be considered and acted upon by the City body with review authority for the housing development.

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

1. If the density bonus is based all or in part on a donation of land, the conditions of Government Code Section 65915 (g)(2)(A through H) are met.
2. If the density bonus, incentive or concession is based all or in part on the inclusion of a child care facility, that the conditions included in Government Code Section 65915 (h)(2)(A) and (B) are met.
3. If the incentive or concession includes mixed use development, the finding included in Government Code Section 65915 (k)(2) are met.
4. If a waiver or modification of a development standard is requested, the developer has demonstrated, for each requested waiver or modification, that the waiver or modification is necessary to make the housing units economically feasible and that the development standards from which a waiver or modification is requested will have the effect of precluding the construction of a housing development at the densities to which the applicant is entitled pursuant to this Chapter or with the concessions and incentives permitted by this Chapter.

D. The approval body may deny a concession or incentive if it makes a written finding based upon substantial evidence of either of the following:

1. The concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this Chapter.
2. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low or moderate income households. For purposes of this

subsection, "specific adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

- E. The approval body may deny a waiver or modification of a development standard only if it makes a written finding based upon substantial evidence or either of the following:
  - 1. The waiver or modification would have a specific adverse impact upon health, safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower, very low or moderate income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
  - 2. The waiver or modification would have an adverse impact on any real property listed in the California Register of Historical Resources.
  
- F. If a density bonus or concession or incentive is based on the provision of child care facilities, the approval body may deny the density bonus or concession or incentive if it finds, based on substantial evidence, that the City already has adequate child care facilities.

**22.57.060 - Density Bonus Housing Agreement.**

- A. Density Bonus Housing Agreement. An applicant requesting a density bonus shall agree to enter into an affordable housing agreement ("agreement") with the City in the City's standard form of agreement. Execution of the agreement shall be made a condition of approval for any discretionary planning permit for housing developments pursuant to this Chapter and shall be recorded as a restriction on any parcels on which the housing units which qualify the housing development for a density bonus will be constructed.

- B. Recording of Agreement. The agreement shall be recorded prior to the final or parcel map approval, or, where the housing development does not include a map, prior to the issuance of a building permit.
  
- C. Contents of the Agreement. Each agreement shall include, but not be limited to, the following:
  - 1. A description of the residential development, including whether the housing units which qualify the housing development for a density bonus will be rented or owner-occupied;
  - 2. The number, size and location of the housing units which qualify the housing development for a density bonus;
  - 3. Provisions and/or documents for resale restrictions, deeds of trust, right of first refusal or rental restrictions;
  - 4. Provisions for monitoring the ongoing affordability of the housing units which qualify the housing development for a density bonus, and the process for qualifying prospective resident households for income eligibility; and
  - 5. Any additional obligations relevant to the compliance with this Chapter.
  
- D. Owner-Occupied Agreements. The purchaser of each owner-occupied housing unit which qualified the housing development for a density bonus shall execute the City's standard form agreement, to be recorded against the parcel, and which includes such provisions as the City may require to ensure continued compliance with this Chapter.

Agreements for Child Care Facilities and Land Donations. Density bonus housing agreements for child care facilities and land dedications shall ensure continued compliance with all conditions included in Government Code Section 65915 (h)(2)(A) and (B) and Government Code Section 65915 (g)(2)(A through H), respectively.

**SECTION 25. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**SECTION 26. Effective date.** This ordinance shall become effective 30 days after the date of adoption.

**SECTION 27. Posting.** The City Clerk shall cause this ordinance to be published within fifteen days after its adoption, at least once, with the names of those city council members voting for or against the ordinance, in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: \_\_\_\_\_  
Rob Schroder, Mayor

ATTEST: \_\_\_\_\_  
Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 5<sup>th</sup> day of February, 2014, and duly passed and adopted at a Regular Meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**EXHIBIT A**  
CITY COUNCIL ORDINANCE NO. C.S.

**GENERAL PLAN – HOUSING ZONING ELEMENT**  
**CONSISTENCY FINDINGS**

**FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN**

*The proposed General Plan and Zoning text amendments are consistent with the policies of the Martinez General Plan, Housing Element and Downtown Specific Plan, components thereof, including, but not limited to the following:*

21.341 - Land Use Element, Residential Uses, High Density Residential Areas: **High density residential development...shall be permitted in limited areas. The primary purpose is provision for apartment types of housing accommodations to serve the needs of single persons, families with preschool children and childless households.**

Facts in Support: The Zoning text amendments allow for density bonus for affordable housing, which will improve the financial viability for affordable high density residential development, providing added housing opportunities for single persons, families, seniors, and low-income households.

LU-1-4 - Downtown Specific Area Plan Policy: **Provide incentives for infill development throughout Downtown, with an emphasis on the opportunity sites identified in this Plan.**

Facts in Support: The Zoning text amendments will promote infill development in Downtown. Many of the opportunity sites identified in the Downtown Specific Plan are suited towards higher density residential that may qualify for density bonuses and incentives.

3.5 - Housing Element Policy: **State Density Bonus Law. Provide density bonuses to projects according to the requirements of State law.**

Facts in Support: Through the implementation of the Zoning text amendments, projects that qualify for density bonuses will be provided density bonuses in accordance with California Government Code Section 65915-65918.

3.8 - Housing Element Policy: **Emergency Shelter and Disaster Preparedness Housing. Identify emergency housing needs and locations as part of the City's disaster preparedness planning.**

**RESOLUTION NO. PC #14-02**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MARTINEZ, RECOMMENDING A CEQA EXEMPTION AND  
MAKING FINDINGS RELATED THERETO IN ACCORDANCE WITH CEQA  
GUIDELINES SECTIONS 15301, 15305, AND 15061(b)(3) AND  
RECOMMENDING THE CITY COUNCIL ADOPT GENERAL PLAN TEXT  
AMENDMENTS TO THE 2007-2014 HOUSING ELEMENT AND ZONING TEXT  
AMENDMENTS TO THE MARTINEZ MUNICIPAL CODE, FOR THE PURPOSE OF  
COMPLIANCE WITH STATE AND FEDERAL HOUSING LAWS.**

**WHEREAS**, in 2005 the State of California enacted changes to the State's density bonus law, Government Code Section 65915 which requires that cities and counties provide for mandated density bonuses, incentives and concessions for affordable housing developments in a quantity, form, and manner that satisfy the criteria contained in Government Code Section 65915-65918; and

**WHEREAS**, the California State Legislature passed Senate Bill 2 in 2007 for local planning and approval of emergency homeless shelters and transitional and supportive housing; and

**WHEREAS**, California Government Code Section 65583(a)(4) requires the identification of a zone or zones where emergency homeless shelters are allowed as a permitted use without a conditional use or other discretionary permit, and the identified zone or zones shall include sufficient capacity to accommodate the local need for emergency homeless shelters; and

**WHEREAS**, California Government Code Section 65583(a)(5) requires that transitional and supportive housing shall be considered a residential use of the property and shall be subject only to those restrictions that apply to other residential uses and dwellings types of the same type and in the same zone; and

**WHEREAS**, the Federal Fair Housing Act (42 U.S.C. Section 3601) and California Fair Employment and Housing Act (Government Code Section 12926 and 12955) impose an affirmative duty on local governments to make reasonable accommodation (modifications or exceptions) in their land use regulations and practices when such accommodation may be necessary to afford disabled persons an equal opportunity to housing; and

**WHEREAS**, eligibility for the streamlined update of the 5th Housing Element Cycle for the California Department of Housing and Community Development necessitates amendments to the General Plan and Zoning text for compliance with the above State and Federal housing laws; and

**WHEREAS**, General Plan text amendments to the 2007-2014 Housing Element would adjust permitted locations for emergency homeless shelters to include areas that would be able to be adaptively reused for emergency homeless shelter use; and

**WHEREAS**, the Zoning text amendments are intended to fulfill the City's obligation under Goal 3 and Implementing Programs 18, 22, 23, and 24 of the City's 2007-2014 Housing Element; and

**WHEREAS**, the Planning Commission held a public hearing on January 21, 2014, and listened to testimony from the public who were notified of the public hearing by the notice publication in the Martinez News-Gazette and by posting of the notice on the outside announcement board at City Hall; and

**WHEREAS**, the Planning Commission considered CEQA exemptions under Sections 15301 (Existing Facilities), Section 15305 (Minor Alterations in Land Use Limitations) and Section 15061(b)(3) (General Rule) prior to taking action on the proposed General Plan and Zoning text amendments.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission hereby recommends that the City Council find the General Plan and Zoning text amendments proposed herein are categorically exempt from the requirements of CEQA, pursuant to California Code of Regulations, Title 14, Chapter 3 (CEQA Guidelines), Sections 15301 (Existing Facilities), Section 15305 (Minor Alterations in Land Use Limitations) and Section 15061(b)(3) (General Rule). Based on the following facts. Emergency homeless shelters and reasonable accommodation and transitional & supportive housing would generally be expected to utilize existing structures or large scale warehouse type of buildings, with no new construction likely to occur. Any new construction would be subject to standard building and zoning regulations existent for other structures in the same zoning district and all emergency homeless shelter uses would be subject to size and operational regulations set forth in the zoning ordinance and designed to prevent impacts to surrounding properties. Density bonus provisions for affordable housing are intended to implement State law. Any impacts associated with a property receiving a density bonus would be evaluated as part of the CEQA review specific to such project when said project is proposed and its particulars are known. The General Plan and Zoning text amendments are exempt from environmental review under the general rule of CEQA because the City has determined with certainty that there is no possibility that the passage of the proposed text amendments amending the General Plan and Zoning Ordinance could have an adverse or significant effect on the environment as the proposed amendments are simply intended to implement and adopt what is required by State and Federal housing laws.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby recommends that the City Council find the General Plan and Zoning text amendments proposed herein are policies and implementing programs directed by the 2007-2014 Housing Element and the related Negative Declaration adopted on January 19, 2011 which evaluated the impacts of implementing these policies and programs, and as pursuant to California Code

of Regulations, Title 14, Chapter 3 (CEQA Guidelines), Sections 15162 (Subsequent EIRs and Negative Declarations) there are no new changes or circumstances since the adoption of the Negative Declaration by the City Council on January 19, 2011.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby finds that the proposed General Plan and Zoning text amendments are consistent with the General Plan and adopts the findings set forth in Exhibit A, attached hereto and incorporated herein by reference.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby recommends that the City Council adopt the General Plan text amendments to the 2007-2014 Housing Element adjusting permitted locations for emergency homeless shelters and Zoning text amendments to the Martinez Municipal Code to incorporate provisions for emergency homeless shelters, density bonus for affordable housing, reasonable accommodation, and transitional and supportive housing, as set forth in Exhibit B and Exhibit C, attached hereto and incorporated herein by this reference.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 21<sup>st</sup> day of January 2014 by the following vote:

AYES: Ford, Glemser, Glover, Keller, & Waggener

NOES:

ABSENT: Allen, Kelly & Blair

ABSTAINED:



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Corey M. Simon  
Senior Planner/Clerk Pro Tem

## EXHIBIT A

### PLANNING COMMISSION RESOLUTION NO. 14-02

#### FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN

The proposed General Plan and Zoning text amendments are consistent with the policies of the Martinez General Plan, Housing Element and Downtown Specific Plan, components thereof, including, but not limited to the following:

21.341 - Land Use Element, Residential Uses, High Density Residential Areas: **High density residential development...shall be permitted in limited areas. The primary purpose is provision for apartment types of housing accommodations to serve the needs of single persons, families with preschool children and childless households.**

Facts in Support: The Zoning text amendments allow for density bonus for affordable housing, which will improve the financial viability for affordable high density residential development, providing added housing opportunities for single persons, families, seniors, and low-income households.

LU-1-4 - Downtown Specific Area Plan Policy: **Provide incentives for infill development throughout Downtown, with an emphasis on the opportunity sites identified in this Plan.**

Facts in Support: The Zoning text amendments will promote infill development in Downtown. Many of the opportunity sites identified in the Downtown Specific Plan are suited towards higher density residential that may qualify for density bonuses and incentives.

3.5 - Housing Element Policy: **State Density Bonus Law. Provide density bonuses to projects according to the requirements of State law.**

Facts in Support: Through the implementation of the Zoning text amendments, projects that qualify for density bonuses will be provided density bonuses in accordance with California Government Code Section 65915-65918.

3.8 - Housing Element Policy: **Emergency Shelter and Disaster Preparedness Housing. Identify emergency housing needs and locations as part of the City's disaster preparedness planning.**

Facts in Support: The General Plan and Zoning text amendments have identified zone(s) as required by California Government Code Section 65583(a)(4) where emergency homeless shelters are allowed as a permitted use and include sufficient capacity to accommodate the local need for emergency homeless shelters.

**3.9 - Housing Element Policy: **Adaptable/Accessible Units for the Disabled. The City will ensure that new multi-family housing includes units that are accessible and adaptable for use by disabled persons in conformance with the California Building Code.****

Facts in Support: As a result of the implementation of the Zoning text amendments, the City will comply with the Federal Fair Housing Act (42 U.S.C. Section 3601) and California Fair Employment and Housing Act (Government Code Section 12926 and 12955) to allow reasonable accommodation (modifications or exceptions) when such accommodation may be necessary to afford disabled persons an equal opportunity to housing.

**3.11 - Housing Element Policy: **Transitional and Supportive Housing. The City of Martinez recognizes the need for and desirability of transitional and supportive housing and will treat transitional and supportive housing as a residential use that will be subject only to the same restrictions that apply to other residential uses of the same type in the same zone.****

Facts in Support: The Zoning text amendments will comply with California Government Code Section 65583(a)(5) which requires that transitional and supportive housing shall be considered a residential use of the property and shall be subject only to those restrictions that apply to other residential uses and dwellings types of the same type and in the same zone. Supportive Housing will be housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260 and as per subdivision (b) of Section 50675.14 of the California Health and Safety Code, and that is linked to on- or off-site services that assist 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. For Transitional Housing, buildings that are configured as rental housing developments, but operated under program requirements, 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 months, per subdivision (h) of Section 50675.2 of the California Health and Safety Code.

\* \* \*

**EXHIBIT B**  
**PLANNING COMMISSION RESOLUTION NO. 14-02**

**GENERAL PLAN – HOUSING ELEMENT –  
PLANNING COMMISSION’S RECOMMENDED AMENDMENTS,  
January 21, 2014**

**AMEND POLICY 3.12 (page 41) AS FOLLOWS:**

- 3.1 **Housing for the Homeless.** The City of Martinez recognizes the need for and desirability of emergency shelter housing for the homeless and will allow emergency shelters as a permitted use within the ~~NC~~ **SC** (Neighborhood **Service** Commercial), ~~CC~~ (Central Commercial), and R-1.5 (High-density residential) **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where the property is located within one-quarter mile of a transit stop, since this could be considered a reasonable distance for a person to walk to/from a transit stop to/from a facility.~~ In addition, the Housing Element recommends the following:
- a. That a use permit be required if a property containing a religious facility wants to open a permanent, year-round shelter.
  - b. The City will encourage a dispersion of facilities to avoid an over-concentration of shelters for the homeless in any given area. An over-concentration of such facilities may negatively impact the neighborhood in which they are located and interfere with the “normalization process” for clients residing in such facilities.
  - c. Support a “housing first” policy that promotes long-term housing solutions for homeless individuals and families in Contra Costa County.
  - d. The City will encourage positive relations between neighborhoods and providers of permanent or temporary emergency shelters. Providers or sponsors of emergency shelters, transitional housing programs and community care facilities shall be encouraged to establish outreach programs within their neighborhoods and, when necessary, work with the City or a designated agency to resolve disputes.
  - e. It is recommended that a staff person from the provider agency be designated as a contact person with the community to review questions or comments from the neighborhood. Outreach programs may also designate a member of the local neighborhood to their Board of Directors. Neighbors of emergency shelters shall be encouraged to provide a neighborly and hospitable environment for such facilities and their residents.
  - f. Development standards for emergency shelters for the homeless located in Martinez will ensure that shelters would be developed in a manner which protects the health,

safety and general welfare of nearby residents and businesses, while providing for the needs of a segment of the population as required by State law. Shelters shall be subject only to development, design review and management standards that apply to residential **industrial** or commercial development in the same zone, except for the specific written and objective standards as allowed in State law.

**AMEND IMPLEMENTING PROGRAM 22 (page 46) AS FOLLOWS:**

22 **Enact Zoning for Emergency Shelter for the Homeless.** The City will establish zoning to allow emergency shelters for the homeless as a permitted use within the ~~NC **SC** (Neighborhood **Service** Commercial), CC (Central Commercial), and R-1.5 (High-density residential)~~ **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where the property is located within one-quarter mile of a transit stop.~~ Zoning will also be established to allow religious facilities to open a permanent, year-round shelter with a use permit. In addition, the City will establish written and objective standards, as allowed in State law, for the following:

- (1) Maximum number of beds;
- (2) Off-street parking based upon demonstrated need;
- (3) Size and location of on-site waiting and intake areas;
- (4) Provision of on-site management;
- (5) Proximity to other shelters;
- (6) Length of stay;
- (7) Lighting; and
- (8) Security during hours when the shelter is open.

*Responsibility:* Community and Economic Development Department; City Attorney; Planning Commission; City Council

*Timing:* 2010

*Funding:* General Fund

*Target:* Zoning Ordinance amendment.

**AMEND CURRENT HOUSING CONDITIONS AND TRENDS, Section C - Homeless (page 84) AS FOLLOWS:**

The approach recommended in the Housing Element is for the City to designate locations within the ~~NC **SC** (Neighborhood **Service** Commercial), CC (Central Commercial), and R-1.5 (High-density residential)~~ **L-I (Light Industrial)** zoning districts, ~~excluding the Downtown Specific Plan area, where emergency shelters for the homeless are allowed "by right."~~ It is also recommended that any property must be located within a one-quarter mile of a transit stop, since this could be considered a reasonable distance for a person to walk to/from a transit stop to/from a facility. In addition, the Housing Element recommends that if a property containing a religious facility wants to open a permanent, year-round shelter that a use permit be required.

Under the proposed zoning designation under the criteria described above, a total of **approximately 86** ~~274~~ acres of land in the City of Martinez would qualify as allowing an

emergency shelter for the homeless as a use allowed “by right,” and not subject to discretionary review. Parcel sizes ranges from **approximately** ~~smaller parcels (generally~~ 0.25 – 0.70 acres in size) ~~to larger parcels ( up to~~ **6.5** ~~13.0~~ acres in size). The area designated provides sufficient opportunity for a facility for the homeless to be built **or adaptively rebuilt** in compliance with SB2 requirements.

The map below shows potential locations ~~within one-quarter mile of a transit stop~~ where an emergency shelter could be allowed without a conditional use permit or other discretionary action. The identified locations have a realistic potential for redevelopment or reuse, and have access to transportation and services. As part of the rezoning action, the City will establish written and objective standards, as allowed in State law, covering:

- Maximum number of beds
- Off-street parking based upon demonstrated need
- Size and location of on-site waiting and intake areas
- Provision of on-site management
- Proximity to other shelters
- Length of stay
- Lighting
- Security during hours when the shelter is open

\* \* \*

## EXHIBIT C

PLANNING COMMISSION RESOLUTION NO. 14-02

# PROPOSED ZONING AMENDMENTS IMPLEMENTING 4<sup>TH</sup> CYCLE HOUSING ELEMENT (2007-2014, adopted January 19, 2011)

AS REQUIRED BY CALIFORNIA HOUSING AND COMMUNITY DEVELOPMENT  
FOR 5<sup>th</sup> HOUSING ELEMENT CYCLE, 2014-2021

## AS RECOMMENDED BY PLANNING COMMISSION

January 21, 2014

APPLICABLE CHAPTERS & SECTION HEADINGS SHOWN AS: CHAPTER 22.04  
PROPOSED NEW CODE TO BE ADDED SHOWN AS: **Proposed new rules**

\* \* \*

### CHAPTER 22.04

#### DEFINITIONS

**22.04.125 Disabled Person(s).** “Disabled Person(s)” means a person who has a medical, physical, or mental impairment or condition that substantially limits one or more major life activities, as those terms are defined in the California Government Code Section 12926, anyone who is regarded as having such a condition or anyone who has a record of having such a condition. It includes a person or persons, or an authorized representative of a disabled person. The term disabled persons does not include a person who is currently using illegal substances, unless he or she has a separate disability.

**22.04.165 Fair Housing Laws.** “Fair Housing Laws” means the Federal Fair Housing Act (42 United States Code Section 3601 et. seq.) and the California Fair Employment and Housing Act (California Government Code Section 12926 and 12955 et. seq.), including amendments there to.

**22.04.234 Homeless Person(s).** “Homeless Person(s)” means an individual who lacks a fixed, regular and adequate nighttime residence; and/or an individual who has a primary nighttime residence that is:

- A. A supervised, publically or privately operated shelter designed to provide temporary living accommodations, including but not limited to emergency shelters, congregate shelters and transitional housing;
- B. An institution that provides a temporary residence for individuals intended to be institutionalized; or
- C. A public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.

**22.04.236 Homeless Shelter, Emergency.** “Homeless Shelter, Emergency” means a residential facility, other than a community care facility, operated by a provider which provides temporary accommodations to persons or families with low income. The term “temporary accommodations” means that a person or family will be allowed to reside at the shelter for a time period not to exceed 180 days. For purpose of this definition, a “provider” shall mean a government agency or private non-profit organization which provides or contracts with recognized community organizations to provide emergency or temporary shelter, and which may also provide meals, counseling and other services, as well as common areas for residents of the facility. Such a facility may have individual rooms, but is not developed with individual dwelling units.

**22.04.238 Homeless Shelter, Ongoing.** “Homeless Shelter, Ongoing ” means a program, operated by a religious or eleemosynary institution (with the intent of placing the homeless in permanent dwelling units within 90 days after first occupying the shelter) that provides overnight shelter, two meals a day and case management services for homeless persons, with no predetermined limitation to length of occupancy.

**22.04.442 Reasonable Accommodation.** “Reasonable Accommodation” means providing disabled persons flexibility or removal of constraints in the application of land use and zoning regulations and procedures, or even waiving certain requirements, when necessary to eliminate barriers to housing opportunities. It may include such things as yard area modifications for ramps, handrails or other such accessibility improvements; hardscape additions, such as widened driveways, parking areas or walkways; building additions for accessibility; tree removal; or reduced off-street parking where the disability clearly limits the number of people operating vehicles. Reasonable Accommodation does not include an accommodation which would impose an undue financial or administrative burden on the City, or require a fundamental alteration in the nature of the City’s land use and zoning program.

**22.04.541 Supportive Housing.** “Supportive Housing” means housing with no limit on length of stay, that is occupied by the target population as defined in subdivision (d) of Section 53260 and as per subdivision (b) of Section 50675.14 of the California Health and Safety Code, and that is linked to on- or off-site services that assist 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.

**22.04.548 Transit Stop.** “Transit Stop” means a regularly scheduled bus stop, as posted in a transit agency’s most current publication of routes and stops, including but not limited to Central Contra Costa Transit Authority’s (CCCTA) “County Connection” bus service.

**22.04.549 Transitional Housing.** “Transitional Housing” and “Transitional Housing Development” means 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 months, per subdivision (h) of Section 50675.2 of the California Health and Safety Code.

## CHAPTER 22.12

### RESIDENTIAL DISTRICTS

#### 22.12.080 Permitted Uses [in R- Residential Districts]

The following uses shall be permitted:

- L. Transitional Housing. Transitional Housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential uses and dwelling types of the same type and in the same zone (e.g. permits single-family dwellings within a single-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa).
  
- M. Supportive Housing. Supportive Housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential uses and dwellings of the same type and in the same zone (e.g. permits single-family dwellings within a single-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a single-family dwelling. Also permits multi-family dwellings within a multi-family zoning district and subject to the same maximum density, minimum lot size and maximum lot coverage, etc. applicable to a multi-family dwelling. Does not permit single-family zoning requirements to be applied to multi-family residential units and vice versa).

#### 22.12.090 Conditional Uses [in R- Residential Districts]

The following uses shall be permitted upon the granting of a conditional use permit in accord with the provisions of Chapter 22.40 of this Title:

- O. Homeless Shelters, Ongoing. Homeless Shelters, Ongoing, within permitted religious or eleemosynary institutions. In addition to the applicable conditions of Use Permit approval pursuant to 22.40.070, Homeless Shelters, Ongoing, within permitted religious or eleemosynary institution, are subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

## CHAPTER 22.16

### COMMERCIAL DISTRICTS

#### 22.16.070 Permitted Uses -- SC-**Service** ~~Neighborhood~~ Commercial District

.

The following uses shall be permitted:

- E. **Homeless Shelters, Emergency. Homeless Shelters, Emergency, subject to the development and operational standards of Section 22.34.230; Homeless Shelters.**

#### 22.16.080 Conditional Uses [in C- Commercial Districts]

The following uses shall be permitted upon the granting of a conditional use permit in accord with the provisions of Chapter 22.40 of this Title:

- T. **Homeless Shelters, Ongoing. Homeless Shelters, Ongoing, within permitted religious or eleemosynary institutions. In addition to the applicable conditions of Use Permit approval pursuant to 22.40.070, Homeless Shelters, Ongoing, within permitted religious or eleemosynary institution, are subject to the development and operational standards of Section 22.34.230; Homeless Shelters.**

## CHAPTER 22.18

### INDUSTRIAL DISTRICTS

#### 22.18.030 LI Light Industrial District--Permitted Uses.

The following uses shall be permitted:

- E. Homeless Shelters, Emergency. Homeless Shelters, Emergency, subject to the development and operational standards of Section 22.34.230; Homeless Shelters.

## CHAPTER 22.34

### GENERAL REQUIREMENTS AND EXCEPTIONS

#### 22.34.010 Purpose

The general provisions and exceptions are incorporated into the zoning title to provide a listing and explanation of provisions and exceptions which are common to **[more than one, or]** all zoning districts. The provisions contained herein are to be considered applicable to all zoning districts, the same as if they were separately included under each zoning district.

[22.34.020 – 22.34.220 unchanged]

#### 22.34.230 Homeless Shelters

- A. Homeless Shelters, Emergency may be located within areas of the SC – Service Commercial District or the LI- Light Industrial District, and with the following development and performance standards:
1. On-site management and on-site security shall be provided during all hours when the emergency shelter is in operation at a ratio of one staff member for every 15 persons utilizing the shelter. One office or cubicle intake area per 10 clients shall be maintained. An indoor onsite waiting area of no less than 275 square feet shall be provided.
  2. External lighting shall be provided for security purposes as a minimum average of 3 foot candles at ground level. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible with the surrounding area.
  3. The development may provide one or more of the following specific common facilities for the exclusive use of the residents and staff:
    - a. Central cooking and dining room(s).
    - b. Recreation room.
    - c. Counseling center.
    - d. Child care facilities.
    - e. Other support services.
  4. Parking and outdoor facilities shall be designed to provide security for residents, visitors, employees and the surrounding area. On-site

parking spaces shall be provided as required by Section 22.36.070.A.11; PARKING – MISCELLANEOUS USE TABLE.

5. A refuse storage area shall be provided that is completely enclosed with masonry walls not less than five feet high with a solid-gated opening and that is large enough to accommodate a standard-sized trash bin adequate for use on the parcel. The refuse enclosure shall be accessible to refuse collection vehicles.
  6. The agency or organization operating the shelter shall comply with the following requirements:
    - a. Temporary shelter shall be available to residents for no more than 180 days in a calendar year. No individual or household may be denied emergency shelter because of an inability to pay.
    - b. Staff and services shall be provided to assist residents to obtain permanent shelter and income.
    - c. The provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to insure compatibility with services provided at the facility, and for training, counseling, and treatment programs for residents.
  7. No Emergency Homeless Shelter shall be located within three hundred feet of another Emergency Homeless Shelter site.
  8. The facility shall obtain and shall at all times maintain good standing with any and all Federal, State, County and City licenses as required by each such agencies for the owner(s), operator(s), and/or staff on the proposed facility.
  9. The maximum number of beds or clients permitted to be served (eating, showering and/or spending the night) shall not exceed 30 persons.
- B. Homeless Shelters, Ongoing are subject to the same requirements for Emergency Homeless Shelters in Subsection A above, with the exception of 22.34.230.A.9, as maximum occupancy is to be established by Use Permit.

## **22.34.240 Reasonable Accommodation**

A. Application. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. Requests for reasonable accommodation shall be submitted with the Planning Application Form (no fee) and with a letter to the Planning Division Director and shall contain the following information:

1. The applicant's name, address and telephone numbers.
2. Address of the property for which the request is being made.
3. The name of the property owner and owner's written consent or signature on Planning Application Form.
4. The current actual use of the property.
5. The basis for the claim that the person(s) is considered disabled under the fair housing laws.
6. The zoning code ordinance provision, regulation or policy from which reasonable accommodation is being requested.
7. Why the reasonable accommodation is necessary to make the specific property accessible to the person(s).
8. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the reasonable accommodation.
9. Other relevant supportive information as requested by the Planning Division Director or his or her designee, consistent with fair housing laws.

B. Decision. Planning Division Director or his or her designee shall render a decision in writing within 30 days after the application is complete, and shall approve, approve with conditions or deny the application based on the findings in Subsection C.

C. Findings. The Planning Division Director or his or her designee shall approve the application, with or without conditions, if the following findings are made:

1. The housing will be used by a disabled person;

2. The requested accommodation is necessary to make specific housing available a disabled person;
  3. The requested accommodation would not impose an undue financial or administrative burden on the City; and
  4. The requested accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
- D. Appeal. An appeal of the decision by the Planning Division Director or his or her designee may be made pursuant to the appeal procedures in Section 22.06.050.
- E. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires other discretionary approval (including but not limited to: design review, variance, conditional use permit, rezoning, general plan amendment, etc.), then the applicant shall file the information required by Subsection A together for concurrent review with the application for discretionary approval.

## CHAPTER 22.36

### OFF-STREET PARKING AND LOADING REQUIREMENTS

#### 22.36.070 - Parking-Miscellaneous Uses.

- A. For uses other than those listed previously, parking shall be provided in accordance with the following table:

#### PARKING-MISCELLANEOUS USE TABLE

Use and Required Parking Spaces.

1. Parks, playgrounds and other—One per three employees plus additional as prescribed by the Planning Commission.
2. Churches, community centers, private clubs and lodges, auditoriums (including school and college auditoriums), theaters, mortuaries and similar places of public assembly—one per each four seats; if no fixed seats, one space for each 40 square feet.
3. Nursing homes, philanthropic and eleemosynary institutions; religious institutions providing sleeping accommodations—one per five beds.
4. Hospitals and sanitariums—one per three beds.
5. Libraries, museums, art galleries, etc.—one per three employees plus additional as prescribed by the Planning Commission.
6. Colleges, for art, craft, music and dancing schools, business, professional, trade schools and colleges—one per three employees plus one additional per five students.
7. Public buildings and grounds other than administrative, offices—one per three employees plus additional as prescribed by the Planning Commission.
8. Public utility structures and installations—one per three employees plus additional as prescribed by the Planning Commission.

9. Bus depots, transit stations, railroad stations, railroad freight stations and yards, airports and heliports—one per three employees plus additional as prescribed by the Planning Commission.
  10. Cemeteries, columbariums and crematories—one per three employees plus additional as prescribed by the Planning Commission.
  11. **Homeless Shelters - one parking space for every five beds.**
  12. Other uses not specifically listed above or specific uses which need more parking than the categories listed above, shall furnish parking as required by the Planning Director. In determining the off-street parking requirements for said uses, the Planning Director shall use the above requirements as a general guide and shall determine the minimum number of parking spaces.
- B. The off-Street parking facilities requirements of this Chapter shall be satisfied by the permanent allocation of the prescribed number of spaces for each use in common parking facilities, provided however, that the total number of spaces shall be not less than the sum of the individual requirements and provided further that an attested copy of a contract between the parties concerned setting forth the agreement to joint use of a common parking facility is filed with the application for a certificate of occupancy

## **CHAPTER 22.57**

### **DENSITY BONUS FOR AFFORDABLE HOUSING**

#### **22.57.010 Purpose**

The purpose of this Chapter is to provide for density bonuses and incentives to developers who comply with California Government Code Sections 65915 through 65918 (State Density Bonus Law).

#### **22.57.020 Definitions.**

Unless otherwise specified in this Chapter, the definitions found in State Density Bonus Law shall apply to the terms contained herein.

#### **22.57.030 Applicability.**

This Chapter shall apply to all zoning districts that permit housing at a prescribed density by the General Plan Land Use Designation and/or zoning district. Where the density allowed under the zoning district is inconsistent with the density allowed under the General Plan Land Use Designation, the Land Use Designation density shall prevail.

#### **22.57.040 State Density Bonus and Incentives.**

A developer of a housing development in the City may be permitted a density bonus and incentives in accordance with the provisions of California Government Code Sections 65915 through 65918 (State Density Bonus Law).

#### **22.57.050 Application Requirements and Review.**

- A. An application for a state density bonus, incentive or concession, waiver or modification of a development standard, or a revised parking standard in accordance with Section 22.57.040, shall be submitted with the first application for approval of a housing development and shall be processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the City and shall include, at a minimum, the following information:
  1. A site plan showing the total number and location of all proposed housing units and the number and location of proposed housing units which qualify the housing development for density bonus housing units.

2. The manner in which the applicant shall satisfy the affordability requirements for the housing units which qualify the housing development for density bonus units.
  3. A description of any requested incentives and concessions, waivers or modification of development standards, or modified parking standards. For all incentives and concessions, except mixed use development, the application shall include evidence deemed sufficient by the City that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall include evidence deemed sufficient by the City that the waiver or modification is necessary to make the housing units economically feasible and that the development standard from which a waiver or modification is requested will have the effect of precluding the construction of the housing development at the densities to which the applicant is entitled pursuant to this Chapter and with the concessions and incentives permitted by this Chapter.
  4. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions pursuant to Government Code Section 65915 (g)(2)(A through H) are met.
  5. If a density bonus or incentive or concession is requested for a child care facility pursuant to Government Code Section 65915 (h), the application shall show the location and square footage of the child care facility and provide evidence that the community lacks adequate child care facilities.
- B. Review and Consideration. An application for a density bonus, incentive or concession, waiver or modification of a development standard, or revised parking standard shall be considered and acted upon by the City body with review authority for the housing development.
- C. Approval. Before approving an application for a density bonus, incentive or concession, or waiver or modification of a development standard, the approval body shall make the following findings:
1. If the density bonus is based all or in part on a donation of land, the conditions of Government Code Section 65915 (g)(2)(A through H) are met.
  2. If the density bonus, incentive or concession is based all or in part on the inclusion of a child care facility, that the conditions included in Government Code Section 65915 (h)(2)(A) and (B) are met.

3. If the incentive or concession includes mixed use development, the finding included in Government Code Section 65915 (k)(2) are met.
  4. If a waiver or modification of a development standard is requested, the developer has demonstrated, for each requested waiver or modification, that the waiver or modification is necessary to make the housing units economically feasible and that the development standards from which a waiver or modification is requested will have the effect of precluding the construction of a housing development at the densities to which the applicant is entitled pursuant to this Chapter or with the concessions and incentives permitted by this Chapter.
- D. The approval body may deny a concession or incentive if it makes a written finding based upon substantial evidence of either of the following:
1. The concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this Chapter.
  2. The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower, very low or moderate income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
- E. The approval body may deny a waiver or modification of a development standard only if it makes a written finding based upon substantial evidence or either of the following:
1. The waiver or modification would have a specific adverse impact upon health, safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to lower, very low or moderate income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
  2. The waiver or modification would have an adverse impact on any real property listed in the California Register of Historical Resources.

- F. If a density bonus or concession or incentive is based on the provision of child care facilities, the approval body may deny the density bonus or concession or incentive if it finds, based on substantial evidence, that the City already has adequate child care facilities.

#### **22.57.060 - Density Bonus Housing Agreement.**

- A. Density Bonus Housing Agreement. An applicant requesting a density bonus shall agree to enter into an affordable housing agreement ("agreement") with the City in the City's standard form of agreement. Execution of the agreement shall be made a condition of approval for any discretionary planning permit for housing developments pursuant to this Chapter and shall be recorded as a restriction on any parcels on which the housing units which qualify the housing development for a density bonus will be constructed.
- B. Recording of Agreement. The agreement shall be recorded prior to the final or parcel map approval, or, where the housing development does not include a map, prior to the issuance of a building permit.
- C. Contents of the Agreement. Each agreement shall include, but not be limited to, the following:
  - 1. A description of the residential development, including whether the housing units which qualify the housing development for a density bonus will be rented or owner-occupied;
  - 2. The number, size and location of the housing units which qualify the housing development for a density bonus;
  - 3. Provisions and/or documents for resale restrictions, deeds of trust, right of first refusal or rental restrictions;
  - 4. Provisions for monitoring the ongoing affordability of the housing units which qualify the housing development for a density bonus, and the process for qualifying prospective resident households for income eligibility; and
  - 5. Any additional obligations relevant to the compliance with this Chapter.
- D. Owner-Occupied Agreements. The purchaser of each owner-occupied housing unit which qualified the housing development for a density bonus shall execute the City's standard form agreement, to be recorded against the parcel, and which includes such provisions as the City may require to ensure continued compliance with this Chapter.

E. Agreements for Child Care Facilities and Land Donations. Density bonus housing agreements for child care facilities and land dedications shall ensure continued compliance with all conditions included in Government Code Section 65915 (h)(2)(A) and (B) and Government Code Section 65915 (g)(2)(A through H), respectively.

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**65915. (density bonus for affordable housing, CA code)**

- a)** When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.
- b) (1)** A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:
- (A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.
  - (B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.
  - (C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome 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.
  - (D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code 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 to the public for purchase.
- (2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).
- c) (1)** An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the 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. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of

the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

- (2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

- (A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.
- (B) For purposes of this subdivision, the local government'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 downpayment 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.
- (C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

- (d)** (1) An applicant for a density bonus pursuant to subdivision(b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

- (A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in 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.

- 2) The applicant shall receive the following number of incentives or concessions:

- (A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.
- (B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.
- (C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower 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.

- 3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of

compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

- e)** In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
- f)** The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.
- g)** For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

- (1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), 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
17	30.5
18	32
19	33.5
20	35

- (2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), 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

- (3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

- (4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), 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

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a

greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units

- (h)** (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan 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

- (2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development.

An applicant shall be eligible for the increased density bonus described in this subdivision 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 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.
  - (C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, 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 local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.
  - (D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.
  - (E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer. (F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.
- (i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:
- (A) 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.

- (B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:
  - (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 density bonus units are required to remain affordable pursuant to subdivision (c).
  - (B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).
- (3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.
- (4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.
- (j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

- (k)** The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.
- (l)** For the purposes of this chapter, concession or incentive means any of the following:
- (1)** A reduction in site development standards or a modification of zoning code requirements 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 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 vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
  - (2)** Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
  - (3)** Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions. This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.
- (m)** Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.
- (n)** Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.
- (o)** For purposes of this section, the following definitions shall apply:

- (1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.
  - (2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.
- (p)** (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:
- (A) Zero to one bedrooms: one onsite parking space.
  - (B) Two to three bedrooms: two onsite parking spaces.
  - (C) Four and more bedrooms: two and one-half parking spaces.
- (2) 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 subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.
- (3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

#### **65915.5.**

- (a)** When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it 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.

- (b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.
- (c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.
- (d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.
- (e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.
- (f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

#### **65916.**

Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

#### **65917.**

In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county

pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

**65917.5.**

**(a)** As used in this section, the following terms shall have the following meanings:

- (1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.
- (2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of
  - (A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.
  - (B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

- (3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a commercial or industrial project.
- (4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

**(b)** A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and

3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

- (c)** The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.
- (d)** If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of

supervisors into a special account to be used for childcare services or child care facilities.

- (e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.
- (f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.
- (g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

**65918.**

The provisions of this chapter shall apply to charter cities.

*end*

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