



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
March 5, 2008**

**TO:** Mayor and City Council  
**FROM:** Albert Lopez, Deputy Community Development Director  
**SUBJECT:** Adoption of Inclusionary Housing and Density Bonus Ordinance  
**DATE:** February 26, 2008

**RECOMMENDATION:**

Accept recommendation from the Planning Commission to adopt the proposed affordable housing and density bonus ordinance.

**BACKGROUND:**

**Consistency with State Law and General Plan**

It is the policy in the State of California that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community. The law acknowledges that, in order for the private market to adequately address housing needs and demand, local governments must adopt land use plans and regulatory systems which provide opportunities for, and do not unduly constrain, housing development.

Housing Element law, enacted in 1969, implements these mandates by requiring each City and County to have its Housing Element certified by the California Department of Housing and Community Development (HCD). As the State and regional agencies continue to promote Smart Growth and Transit Oriented Development, we now find it increasingly necessary to maintain a certified Housing Element to take advantage of various funding programs, incentives and access to grants and loans. Locally, Measures C and J which provides a funding stream from the Contra Costa Transit Authority, requires the City to maintain a certified Housing Element in order to receive a yearly allocation.

Currently the City of Martinez has a certified Housing Element. It was certified by HCD in 2006 because of the City's commitment to land use changes including the rezoning 15 acres of land to higher densities to accommodate affordable housing and to development of programs to expand affordable housing. The continued certification of our Housing Element is not a given, and in two years when the City of Martinez will be required to update the Housing Element and be re-certified, a review of compliance with the goals, policies and programs included in the 2006 Certified Housing Element will occur.

These commitments in the form of new programs are as follows and are the basis for this proposed ordinance: **Goal 1** of the Housing Element is to increase the supply of housing for all economic segments of the community, and to promote throughout the City a mix of housing types responsive to household size, income, age and accessibility needs. **Policy 1.1** requires the City to provide active leadership in implementing the policies and programs contained in the Housing Element and monitor housing production annually. **Program 7** of the Housing Element commits and requires the City to revise the City’s Zoning Ordinance to codify density bonus requirements of State law, and **Program 9** commits and requires the City to adopt an affordable housing requirement as part of the Zoning Ordinance. Both of these programs are addressed with the current ordinance.

The Housing Element also contains numeric goals for unit construction by income level provided by the Association of Bay Area Governments (ABAG) and the State of California Department of Housing and Community Development (HCD). These goals are called regional housing needs determination or allocation (RHNA). The adopted Housing Element has RHNA numbers for the 1999-2006 planning period and ABAG recently released new RHNA numbers for the 2007-2014 planning period which will form the basis of an updated Housing Element. Those numbers are as follows:

Planning Period	Very low	Low	Moderate	Above Moderate	Total <sup>1</sup>
1999-2006	248	139	341	613	<b>1341</b> <sup>2</sup>
2007-2014	261	166	179	454	<b>1060</b>

<sup>1</sup> – RHNA numbers are not cumulative over Planning Periods.

<sup>2</sup> – There were less than 300 building permits finalized during 2000-2006, none were income restricted BMR units.

Although there is currently no active penalty for not meeting the RHNA numbers, the certification of our Housing Element relies, in large part, on how actively the City is working towards attaining the RHNA goals. As mentioned above, the adoption of the attached ordinance will demonstrate the City has taken a pro-active role, as contained in **Policy 1.1**.

Without taking action now, the City will not be fulfilling its regulatory obligations included in the Housing Element and it will be exceedingly difficult to begin to meet our RHNA housing targets as determined by ABAG. Taken together, the performance of the City in implementing its Housing Element could make it more difficult for the State to find our Housing Element in full compliance, and could put at risk funding the City is currently getting, or funding it may compete for in the future.

### **The Housing Task Force**

In late 2006 the Mayor Rob Schroder reconvened the Housing Task Force (HTF) with the express duty to discuss affordable housing policy, and draft an inclusionary housing ordinance that would assist the City in meeting its affordable housing obligations as set forth in our adopted and State certified Housing Element. The HTF consisted of members of the City Council, the

Planning Commission, the Design Review Committee and various other interested community members with a desire to see the City begin to implement an affordable housing program. The HTF met over a one year span and with the assistance of planning staff, the City Attorney and guest speakers, put forth the policies that are now presented in this draft ordinance.

The HTF also reviewed what other cities are doing in regards to Inclusionary Housing programs since to date, Martinez has not had an affordable housing program. The cities and towns in Contra Costa County that have Inclusionary Ordinances include Brentwood, Clayton, Concord, Danville, Hercules, Pleasant Hill, Pittsburg, Richmond and Walnut Creek. Lafayette and San Ramon are working on Ordinances. Generally in these other cities, the applicable size of the development ranges from 2 to 8 units. The inclusionary requirement is generally 10-15 percent. Some jurisdictions allow a smaller percentage of Inclusionary Units in exchange for a deeper level of affordability. All require long term resale restrictions on for-sale Inclusionary Units. These were the provisions of the proposed ordinance discussed at length by the HTF in developing the draft ordinance.

### **Planning Commission Review**

On January 22nd, the Planning Commission reviewed this item in a study session and instructed staff to complete the environmental review and return for a formal recommendation to City Council. On February 26, 2008, the Planning Commission held another hearing to make a formal recommendation to the City Council on these ordinances. At that meeting the Planning Commission deliberated the content of the ordinances and passed a resolution recommending approval. Although there was some concern about the current conditions in the housing market and the impact on smaller developers, the Planning Commission ultimately believed the City had to initiate the process to provide more affordable housing. The draft ordinance includes an exemption provision. The City Council may wish to provide direction relative to one or more exemptions for review and consideration by the Planning Commission after adopting this ordinance. The Planning Commission also recommended that the ordinance be reviewed in one year to consider its efficacy. Draft minutes of that meeting are attached.

### **ORDINANCE SPECIFICS**

The draft ordinance is composed of two pieces; first is the inclusionary housing portion, Section 22.60. It will become a new section of the zoning code that lays out the requirements that new housing developments (both rentals and ownership housing) must comply with. At least 15% of the total units constructed must be available to low-income households (also known as Below Market Rate units, or BMR units). Rental projects are treated a bit differently in that they must provide 15% of their units to very low and low income households. Ownership projects must provide 15% of their units to low and moderate income households. The HTF discussed the different incomes levels at length, and made the decision that very-low income households could best be served by the rental market. The definitions of these household incomes are also included in the attached draft ordinance.

Currently, as reported by the California Department of Housing and Community Development (HCD), the median income for a family of four in Contra Costa County is \$83,800 (2007).

The second portion of the proposed ordinance is the Density Bonus, Section 22.62. This is also a new section of the zoning code and it implements existing State law granting density bonuses to housing developments that voluntarily provide additional BMR units beyond what is required by the inclusionary provisions. Although density bonuses have been allowed under State law for several years, Martinez has not had such a request in many years.

### **Ordinance Specifics – Section 22.60 Inclusionary Housing**

As mentioned above, the base requirement for inclusionary units is 15% of the total number of units. Other highlights of the proposed new code are explained below:

**4 units and greater** – The inclusionary ordinance applies to development projects of 4 units or greater.

**In-lieu fee is for projects of less than 20 units** – The HTF believed smaller projects should be able to pay an in-lieu fee and buy-out of the requirement rather than to construct the actual units. For projects 21 units and greater, this in-lieu fee option is not available, and actual units must be provided.

**In-lieu fee schedule** – Also for the City Council consideration and approval is an in-lieu fee schedule used successfully in other cities whereby the in-lieu fee increases as the housing cost increases.

The formula works by increasing the in-lieu fee by \$200 for each additional \$5,000 in home value, so that more affordable starter homes pay a lower fee than higher priced luxury homes. In this example, a ten unit market rate townhome project selling units at \$500,000 could buy-out of the program by providing \$176,000 in in-lieu fees. Exhibit B shows the various in-lieu fee calculations for projects of various sizes, assuming a fixed sales price of \$500,000.

**Exemptions by City Council** – The HTF discussed at length the recently adopted Downtown Specific Plan and how this program could discourage small infill projects with tight profit margins. As a possible solution the draft ordinance includes a provision that the City Council could issue exemptions from time to time by resolution. As an example, the City Council could issue an exemption for projects under 10 units in the Downtown Area for a period of five years, to spur development over a given time in a given geographic area. At the Planning Commission hearing it was added that such exemptions first shall be reviewed by the Planning Commission with a recommendation to the City Council prior to action by the City Council.

**Location and design of units** – The location of BMR units must be dispersed throughout a residential development, and the design shall be comparable to market rate units, except the interior finishes can be different, so long as they are durable. The number of bedrooms shall also be similar.

**Duration of affordability** – The units shall be affordable for 45 years.

## **Compliance Procedures**

The program is administered through an Affordable Housing Plan and Agreement that shall be submitted by each project applicant and approved by the City. The Affordable Housing Agreement is a separate document on a form provided by the City. This is essentially an agreement between the developer and the City to provide BMR units as required pursuant to the ordinance. Such agreement will be recorded against the development of which the units are a part.

For ownership housing, one of the key provisions of such an agreement is re-sale provisions that describe the procedure for reselling BMR units should the owner decide to sell. Although a draft of the agreement is not yet written, a common approach for resale units is to give the City the right of first refusal, such that if the City wants to purchase the unit (and sell to another eligible household), it can. Otherwise, the affordable housing agreement will specify that the BMR unit can only be sold to another income-eligible household (approved by City), or if sold to a non-eligible household, the City realizes the equity increase by capturing it at time of sale.

For rental housing, the affordable housing agreement will specify eligible households, the process of filling vacancies for BMR units, and the process to follow in cases where a tenant's income may increase beyond the income limits.

## **AFFORDABLE HOUSING TRUST FUND**

Another significant provision in the draft ordinance is the creation of the Affordable Housing Trust Fund (the "Fund"). The Fund already exists pursuant to an earlier City Council action, yet the ordinance specifies the use of funds deposited into the Fund. The Fund should be used to increase the production of affordable housing through downpayment assistance, loans or grants to non-profit developers, or other public-private partnerships. The Fund shall be administered by the City Manager or his/her designee with the approval of the City Council.

The Fund can serve as an economic engine to grow monies to a significant amount and be utilized to encourage the development of affordable units. To date, no funds have been deposited into the Fund, although there are approved housing developments that have, as conditions of approval, the requirement to deposit funds prior to certificates of occupancy and filing of final maps.

## **Ordinance Specifics – Section 22.62 Density bonuses**

The Density Bonus provisions are similar to the Inclusionary Housing program, in that it will result in BMR units. However in the case of a Density Bonus, a developer can seek an increase in total units if they provide BMR units on a voluntary basis above and beyond what is required by the inclusionary provisions. In order to make the additional units possible, cities are required to offer various incentives or concessions such as reduced development standards (parking, setbacks etc.) or by allowing mixed use development where otherwise not allowed. The greater the number of BMR units that are provided and the higher the affordability level, the larger the increase in density is allowed. Generally the bonus starts at 20% and usually doesn't go beyond 35%. These increases will likely result in projects having higher densities than those allowed pursuant to a zoning or general plan designation.

## Other Highlights:

To qualify - Projects must meet the following criteria:

At least 10% of units BMR to low income households (80% of AMI)

At least 5% of units BMR to very-low income households (50% AMI)

At least 10% units in condo project to moderate income households (120% AMI)

Be a senior project

**Density Bonus for land donation** – A developer can also receive a density bonus for donating land, as long as the donation happens prior to final map, or the City can elect the land be donated to a housing developer (ostensibly a non-profit)

**Incentives or concessions** – The ability to get incentives or concessions is not automatic if they would result in adverse impacts, or if they are not needed to make the units affordable. Similar to the actual density bonus, the higher the number of units and the affordability levels, the number of concessions and incentives can increase, up to a maximum of three concessions.

**Parking** – The reduction in the total number of spaces, and the provision of uncovered parking could be a concession or incentive.

**Additional density bonus for childcare facilities** – A density bonus equal to the floor area used by such a childcare facility is also available.

**Continued affordability** – The density bonus requires those units to be BMR for 30 years (as opposed to 45 years for inclusionary units)

**Density Bonus Agreement** – Similar to the inclusionary program, a project seeking a density bonus must enter into an agreement with the City to protect and regulate the manner in which the units are constructed, resale restrictions, rental affordability levels, and tenant qualifications.

In conclusion, the two programs are paired together to implement policies of the City's recently approved Housing Element and as required by State law for the provision of density bonuses for projects meeting eligible criteria.

The Housing Task Force discussed many of the provisions of the proposed new code in detail and with the assistance of staff and affordable housing experts, devised a draft that is appropriate for Martinez and is reasonable given the development opportunities that currently exist, or may exist in the future. The code contains a high degree of flexibility so that economic development goals can be pursued while addressing the issue of affordable housing.

## Environmental Review:

Pursuant to the California Environmental Quality Act, a Negative Declaration was prepared for this project with a required 20 day comment period extending from Tuesday, February 5th 2008 to Monday February 25th, 2008. As of this writing, the City received two letters (City of Pleasant Hill and LAFCO). Both respondents thanked the City for the opportunity to respond; neither had any comments on the adequacy of the environmental review.

**FISCAL IMPACT:**

There is no impact to the General Fund. The Affordable Housing Trust Fund will grow as in-lieu fees are collected, which could be used to further affordable housing goals.

**ACTION:**

Adopt resolution approving the environmental document, introduce the ordinance, adopt the resolution approving the in-lieu fee schedule, and provide direction to staff regarding exemptions for Planning Commission consideration and recommendation.

**ATTACHMENTS:**

- Exhibit A -- Draft Resolution approving environmental document
- Exhibit B -- Draft ordinance sections 22.60 and 22.62 (25 pages), includes new definitions
- Exhibit C -- Draft resolution approving in-lieu fee schedule
- Exhibit D -- Negative Declaration and Initial Study
- Exhibit E -- Planning Commission Minutes (Draft)

**APPROVED BY:**   
City Manager

**APPROVED BY:**   
Assistant City Manager  
Community & Economic Development

**EXHIBIT A**

**RESOLUTION NO. -08**

**ADOPTING A NEGATIVE DECLARATION RELATED TO A ZONING ORDINANCE  
AMENDMENT ADDING SECTIONS 22.60 INCLUSIONARY HOUSING AND 22.62  
DENSITY BONUSES TO THE MARTINEZ MUNICIPAL CODE**

**WHEREAS**, the zoning code amendments implement the affordable housing policies and programs of the Housing Element of the General Plan; and,

**WHEREAS**, pursuant to the California Environmental Quality Act an initial study was prepared for this project and found that no significant environmental impacts would result from the adoption of the ordinance; and,

**WHEREAS**, pursuant to the California Environmental Quality Act, a Negative Declaration was prepared for this project with a required 20 day comment period extending from Tuesday, February 5th 2008 to Monday February 25th, 2008 and no comments were received regarding the adequacy of the environmental document; and,

**WHEREAS**, the City of Martinez is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based, and the location of said documents is the Martinez Community Development Department at 525 Henrietta Street, Martinez CA 94553; and,

**WHEREAS**, the Planning Commission considered the Negative Declaration and all comments received at their February 26, 2008 meeting, and recommended by resolution #08-01 adoption to the City Council; and,

**WHEREAS**, the City Council finds there is no substantial evidence, in light of the whole record before it, that the project may have a significant effect on the environment, and the Negative Declaration reflects the lead agency's independent judgment and analysis.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Martinez hereby adopts the Negative Declaration for this ordinance amendment (the project).

\* \* \* \* \*

**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 March 2008, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

## EXHIBIT B

### ORDINANCE NO. C.S.

#### AMENDING THE MARTINEZ MUNICIPAL CODE TITLE 22, ZONING, BY ADDING CHAPTER 22.60 - INCLUSIONARY HOUSING AND CHAPTER 22.62 - DENSITY BONUSES RELATING TO THE DEVELOPMENT OF AFFORDABLE HOUSING

**WHEREAS**, the City of Martinez's adopted 2001-2007 Housing Element contains programs to codify density bonus requirements of State law (program 7), and to adopt an affordable housing requirement (program 9) as part of the Zoning Ordinance; and

**WHEREAS**, recent development proposals and the public hearing process has brought to light the need to have an affordable housing requirement to increase the production of affordable housing units, and to enable the collection of in-lieu housing fees as deposits into the City's Affordable Housing Trust Fund; and

**WHEREAS**, Mayor Schroder convened the Housing Task Force in November of 2006 to investigate the development of and develop a draft inclusionary housing ordinance that would assist the City in meeting its affordable housing obligations as set forth in the adopted Housing Element; and

**WHEREAS**, the Housing Task Force met for approximately one year to discuss the features of an effective inclusionary Ordinance, and also discussed Density Bonuses required by State law as a companion ordinance; and

**WHEREAS**, the after investigation and review by the Housing Task Force and City Staff a draft of the proposed ordinances was prepared which balances the economic development needs of the City with the need to provide housing at all incomes levels, and allows exemptions as granted by the City Council from time to time; and

**WHEREAS**, the 15% affordable housing requirement reasonably balances private investment into market rate housing with the affordable housing needs of the City; and

**WHEREAS**, the proposed inclusionary ordinance serves the very-low income households with rental housing, as the Housing Task Force believed rental housing will best serve this income category and not place very-low income households at risk with a high cost housing burden; and

**WHEREAS**, the proposed inclusionary ordinance provides opportunities for homebuyers at low and moderate income levels as the Housing Task Force believed these income levels could support a traditional home mortgage for an affordably priced home; and

**WHEREAS**, the adoption of standards as to the size, number and location of where inclusionary units can be located will integrate mixed income communities to the extent practicable; and

**WHEREAS**, the inclusion of an in-lieu fee available to projects with 20 units and less will have the effect of providing funding to the City's Affordable Housing Trust fund to be used for the provision of additional affordable housing throughout the City; and

**WHEREAS**, the in-lieu fee is reasonably calculated to increase as the housing cost increases, to further encourage the creation of more affordable housing at all income levels; and

**WHEREAS**, the Density Bonus ordinance is written to implement the requirements of State of California law pertaining to density bonuses as of the date of this ordinance, subject to future changes if aspects of this ordinance become contrary to State Law; and

**WHEREAS**, concessions and incentives per the Density Bonus ordinance shall be granted in compliance with the requirements of state law; and

**WHEREAS**, the prohibition on counting affordable units as part of a Density Bonus request toward the Inclusionary Housing requirement is a deliberate feature of the proposed ordinances as recommended by the Housing Task Force; and

**WHEREAS**, the Planning Commission of the City of Martinez, held a duly noticed public hearing on February 26, 2008 to review the final draft of the proposed regulations and found that the proposed ordinance was consistent with the Martinez General Plan, and applicable Specific Plans and recommended approval of the proposed ordinance to the City Council of the City of Martinez; and

**WHEREAS**, on March 5, 2008 the City Council of the City of Martinez held a duly noticed public hearing on the proposed ordinance; and

**WHEREAS**, the City Council finds that adoption of the proposed ordinances is consistent with the Housing Element of the General Plan, the Land Use Element of the General Plan, all Specific Plans, and including, but not limited to the General Plan objective of promoting a citywide housing stock which provides for a range in housing cost and type; and

**WHEREAS**, pursuant to the California Environmental Quality Act, a Negative Declaration was prepared for this project with a required 20 day comment period extending from Tuesday, February 5th 2008 to Monday February 25, 2008; and

**WHEREAS**, the Planning Commission considered the Negative Declaration prior to making their recommendation to the City Council; and

**WHEREAS**, upon consideration of the Negative Declaration and all comments received, and based upon their independent judgment and analysis, the City Council found by the adoption of a separate resolution that there is no substantial evidence that the proposed ordinances will have a significant effect on the environment.

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

**SECTION 1.** Chapter 22.60 of the Martinez Municipal Code is hereby added to read as follows:

**CHAPTER 22.60 - INCLUSIONARY HOUSING**

**22.60.010 Purpose.**

The purpose of this Chapter is to:

- A. Encourage the development and availability of housing affordable to a broad range of households with varying income levels within City as mandated by Government Code Sections 65580 et seq.; and
- B. Offset the demand on housing and available land created by new development, and mitigate environmental and other impacts that accompany new development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region; and

C. Implement the policies of the Housing Element of the General Plan.

**22.60.020 Applicability.**

A. **Inclusionary requirement.** Each residential development of 4 or greater units shall be designed and constructed to provide at least fifteen percent (15%) of the total units as inclusionary units restricted for occupancy by moderate, low or very low income households. The number of inclusionary units required for a particular project will be determined only once, at the time of Tentative or Parcel Map approval, or, for developments not processing a map, prior to issuance of a Building Permit. If a change in the subdivision design changes the total number of units, the number of inclusionary units required will be recalculated to coincide with the final approved project.

1. **Calculation.** For purposes of calculating the number of affordable units required by this Section, any additional units authorized as a density bonus in compliance with Chapter 22.62 (Density Bonuses) will not be counted in determining the required number of inclusionary units. However, if an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of Chapter 22.62, those affordable dwelling units that qualify a residential development for a density bonus are in addition to, and do not count toward satisfying the inclusionary housing requirements of this Chapter. In determining the number of whole inclusionary units required, any decimal fraction less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

2. **Affordability Level Requirements.** The affordability level requirements shall be as follows:

a. **Rental Projects:** A rental project shall include fifty percent (50%) of the required number of inclusionary units for rent to households of Very Low Income and at monthly rents not to exceed one twelfth (1/12) of thirty (30) percent of the maximum annual income for Very Low Income households and fifty percent (50%) of the required number of inclusionary units for rent to households of Low Income at monthly rents not to exceed one twelfth (1/12) of 30% of the maximum annual income for Low Income households.

b. Ownership Projects: An ownership project shall include fifty percent (50%) of the required number of inclusionary units for sale at a price affordable to Moderate Income households and fifty percent (50%) of the required number of affordable units for sale at a price affordable to Low Income Households. In order to qualify as an inclusionary unit, the average monthly housing payments after factoring in a maximum ten percent down payments, including, interest, principal, mortgage insurance, property taxes, homeowners insurance, assessments and homeowner association dues, if any, shall not exceed one twelfth (1/12) of thirty five (35) percent of the maximum annual household income for a Moderate Income household or one twelfth (1/12) of thirty percent of the maximum annual household income for a Low Income Household, adjusted for household size.

c. Land Subdivisions: Residential lots created from a subdivision map shall, through conditions of approval, incorporate the requirements of this division.

B. **Minimum requirements.** The requirements of this Chapter are minimum and maximum requirements, although nothing in this Chapter limits the ability of a person to waive their rights or voluntarily undertake greater obligations than those imposed by this Chapter.

#### **22.60.030 - Exemptions.**

The requirements of this Chapter do not apply to:

- A. The reconstruction of a structure that has been destroyed by fire, flood, earthquake or other act of nature, provided that reconstruction does not increase the number of residential units; or
- B. Housing constructed by other governmental agencies; and
- C. A second unit; and
- D. Any project or area as exempted by the City Council from time to time by resolution. Project or area exemptions shall be reviewed by the Planning Commission with a recommendation to the City Council prior to action by the City Council.

#### **22.60.040 Standards for Inclusionary Units.**

Each inclusionary unit built in compliance with this Chapter shall comply with the following standards.

- A. **Location of inclusionary units.** Except as otherwise provided in this Chapter, inclusionary units shall be dispersed throughout a residential development.
- B. **Design.** Inclusionary units shall be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Inclusionary units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. The number of bedrooms shall be the same and in the same proportion as those in the market-rate units, except that if the market-rate units provide more than four bedrooms, the inclusionary units need not provide more than four bedrooms.
- C. **Timing of construction.** All inclusionary units shall be constructed and occupied concurrently with or prior to the construction and occupancy of market-rate units or development. In phased developments, inclusionary units may be constructed and occupied in proportion to the number of units in each phase of the residential development, provided that the last inclusionary unit in the project shall be constructed before the last market rate unit.
- D. **Duration of affordability requirement.** Inclusionary units produced in compliance with this Chapter shall be legally restricted to occupancy by households of the income levels for which the units were designated, for the maximum time permitted by law or 45 years, whichever is greater, from the date of first occupancy for rental units, and for a minimum of 45 years from the date of each sale of any affordable unit for owner occupied units. (Additional affordability requirements may apply in compliance with State Redevelopment Law (Health and Safety Code Section 33413(c)).

#### **22.60.050 In-Lieu Fees.**

A residential development of twenty or fewer units may comply with the requirements of this Chapter by paying an in-lieu fee as established by Council resolution, as it may be amended from

time to time. The Council may annually review the fee and may, based on the review, adjust the fee.

**22.60.060 Alternatives.**

A. **Developer proposal.** A developer may propose an alternative means of compliance in the Inclusionary Housing Plan as provided in Section 22.60.070.B as follows.

1. **Off-site construction.** Units may be constructed off-site if the inclusionary units will be located in an area where, based on the availability of affordable housing, the Council finds that the need for such units is greater than the need in the area of the proposed development.

2. **Land dedication.** In lieu of building inclusionary units, a developer may choose to dedicate land to the City suitable for the construction of inclusionary units that the Council reasonably determines to be of equivalent or greater value than the land and net construction costs which would be required by applying the inclusionary obligation.

3. **Combination.** The Council may accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost to the developer of providing inclusionary units on-site (land and construction costs) as would otherwise be required by this Chapter. The value of a proposed land dedication shall be determined by an appraiser appointed by the City.

B. **Discretion.** The Council may approve, conditionally approve, or reject any alternative proposed by a developer as part of an Affordable Housing Plan. Any approval or conditional approval shall be based a finding that the purposes of this Chapter would be better served by implementation of the proposed alternatives. In determining whether the purposes of this Chapter would be better served under the proposed alternative, the Council should consider:

1. Whether implementation of an alternative would overly concentrate inclusionary units within any specific area and, if so, must reject the alternative unless the undesirable concentration of inclusionary units is offset by other identified benefits that flow from implementation of the alternative proposed; and

2. The extent to which other factors affect the feasibility of prompt construction of the inclusionary units on the property, such as costs and delays, the need for an appraisal, site design, zoning, infrastructure, clear title, grading and environmental review.

#### **22.60.070 Compliance Procedures.**

- A. **General.** Approval of an inclusionary housing plan and implementation of a City approved inclusionary housing agreement is a condition of any Tentative Map, Parcel Map or Building Permit for any development for which this Chapter applies. This Section does not apply to an exempt project, or to a project where the requirements of the Chapter are satisfied by payment of a fee in compliance with Section 22.60.050 (In-Lieu Fees).
- B. **Inclusionary Housing Plan.** No application for a Tentative Map, Parcel Map, or Building Permit to which this Chapter applies shall be deemed complete until an Inclusionary Housing Plan is submitted with the application. At any time during the review process, the City may require from the developer additional information reasonably necessary to clarify and supplement the application or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this Chapter. The Inclusionary Housing Plan must include:
  1. The location, structure (attached, semi-attached, or detached), whether for-sale or rental, size of the proposed market-rate and inclusionary units, and the basis for calculating the number of inclusionary units;
  2. A floor or site plan showing the location of the inclusionary units;
  3. The income levels to which each inclusionary unit will be made affordable in compliance with this Chapter;
  4. For phased development, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Section 22.60.040.C (Standards for Inclusionary Units - Timing of construction).
  5. Any alternative means designated in Section 22.60.060.A (Alternatives - Developer proposal) proposed for the development along with information necessary to support

the findings required by 22.60.060.B (Alternatives - Discretion) for approval of the alternatives; and

6. Any other information reasonably requested by the City to assist with evaluation of the plan in compliance with the standards of this Chapter.

C. **Inclusionary Housing Agreement.** The Inclusionary Housing Agreement shall use the form provided by the City. The contents of the agreement may vary depending on the manner in which the provisions of this Chapter are satisfied for a particular development. Each Inclusionary Housing Agreement shall include, at minimum, the following:

1. Description of the development, including whether the inclusionary units will be rented or owner-occupied;
2. A restriction on the rental of "for sale" units;
3. The number, size and location of very low-, low- or moderate-income units;
4. Provisions and documents for resale restrictions, deeds of trust, and rights of first refusal or rental restrictions;
5. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident Households for income eligibility; and
6. Any additional obligations relevant to the compliance with this Chapter.

D. **Recording of agreement.** Each Inclusionary Housing Agreement shall be recorded against the development of which the units are a part, the owner-occupied inclusionary units and residential projects containing rental inclusionary units, as applicable. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the City shall also be recorded against owner-occupied inclusionary units. In cases where the requirements of this Chapter are satisfied through the development of off-site units, the Inclusionary Housing Agreement shall simultaneously be recorded against the property where the off-site units are to be developed.

**22.60.080 - Eligibility for Occupying Inclusionary Units.**

- A. **General eligibility.** No household may occupy an inclusionary unit unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an Inclusionary Housing Agreement or resale restriction. If the City or its designee maintains a list or identifies eligible households, initial and subsequent occupants will be selected first from the list of identified households, to the maximum extent possible, in compliance with any rules approved by the City.
- B. **Occupancy.** A household who occupies a rental inclusionary unit or purchases an inclusionary unit shall occupy the unit as a principal residence.

**22.60.090 - Owner-Occupied Units.**

- A. **Initial sales price.** The initial sales price of the inclusionary unit must be set so that the eligible household will pay an affordable ownership cost.
- B. **Transfer.** Renewed restrictions will be entered into on each change of ownership, with a renewal term equal to the original term or 45 years, whichever is greater, upon transfer of an owner-occupied inclusionary unit prior to the expiration of the initial affordability period.
- C. **Resale.** The maximum sales price permitted on resale of an inclusionary unit designated for owner-occupancy shall be the lower of:
  - 1. Fair market value; or
  - 2. The seller's lawful purchase price, increased by the rate of increase of area median income during the seller's ownership.

To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, sellers may recover at time of sale the depreciated value of capital improvements made by the seller and the seller's necessary and usual costs of sale, and may authorize an increase in the maximum allowable sales price to achieve such recovery.

D. **Change in title.** The following requirements apply in the event of a change in circumstance that may occur prior to the expiration of the required affordability period.

1. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant, tenant in common, or community property holder, without respect to the income-eligibility of the household.
2. Upon the death of a sole owner or all owners, and inheritance of the inclusionary unit by a non-income-eligible inheritee, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible household. A non-eligible inheritee may request and the Council may waive this requirement on the basis of hardships specified by the Council. Alternatively, the Council may authorize their continued ownership with the unit rented at an affordable rate to an eligible household.

#### **22.60.100 - Rental Units.**

A. **Eligibility of tenants.** The owner of rental inclusionary units shall be responsible for certifying the income of the tenant to the Director at the time of initial rental, and annually thereafter. This shall be completed by viewing acceptable documentation, including income tax statements or a W-2 for the previous calendar year, and submitting, on a form approved by the City, a certification that the tenant qualifies as an income eligible household.

B. **Selection of tenants.** The owner of rental inclusionary units shall fill vacant units by either:

1. Selecting income-eligible households themselves as long as the owner complies with the publication requirements in Subsection C.
2. Selecting income-eligible households from the City's eligible waiting list, if any.

C. **Publication of Availability of Units.** Whenever an Inclusionary Unit becomes available, the Owner shall publish notices of the availability of Inclusionary Units in newspapers circulated widely in the city, including newspapers that reach minority communities. The notice should briefly explain what inclusionary housing is, state

the applicable income requirements, indicate where applications are available, state when the application period opens and closes, and provide a telephone number for questions. Applications may require the name, address, and telephone number of the applicant; the number of persons to occupy the household; and any other information relevant to determine whether the applicant is eligible to occupy an inclusionary unit. The owner shall submit proof of publication to the Director.

- D. **Notification to City.** Whenever an inclusionary unit becomes available, the owner shall immediately notify the Director in writing.
- E. **Subsequent rental to income-eligible tenant.** The owner of rental inclusionary units shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, except as otherwise required to comply with this Chapter (i.e., rent levels, occupancy restrictions and income requirements) and/or government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited.
- F. **Changes in tenant income.** If after moving into an inclusionary unit the tenant's income eventually exceeds the income limit for that unit, the tenant may remain in the unit (the "original unit") as long as his/her income does not exceed 140 percent of the income limit for the original unit. Once the tenant's income exceeds 140 percent of the income limit for the original unit, the following shall apply:
  - 1. If the tenant's income does not exceed the income limits of other inclusionary units in the residential development, the owner may, at the owner's option, allow the tenant to remain in the original unit at the tenant's new applicable affordable housing cost, as long as the next vacant unit is re-designated for the same lower income category applicable to the original unit. If the owner does not want to re-designate the next vacant unit, the tenant shall be given one year's notice to vacate the unit. If during the year, an inclusionary unit becomes available and the tenant meets the income eligibility for that unit, the owner shall provide the tenant with the opportunity to submit an application for that unit.
  - 2. If there are no units designated for a higher income category within the residential development that may

be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the residential development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market rate and designate the newly vacated unit for the original unit at the applicable affordable housing cost. The newly vacated unit must be comparable in size (i.e. number of bedrooms, bathrooms, square footage, etc.) and location (i.e. same floor, same view, etc.) as the original unit.

#### **22.60.110 Adjustments, Waivers.**

The requirements of this Chapter may be adjusted or waived in extreme cases if the developer demonstrates to the Council by the presentation of substantial evidence that applying the requirements of this Chapter would take property in violation of the U.S. or California Constitutions.

- A. **Timing.** To receive an adjustment or waiver, the developer must make a showing when applying for a first approval for the residential development, and/or as part of any appeal that the City provides as part of the process for the first approval.
- B. **Considerations.** In making a determination on an application to adjust or waive the requirements of this Chapter, the Council may assume each of the following when applicable:
  - 1. That the developer is subject to the inclusionary housing requirement or in-lieu fee; and
  - 2. The extent to which the developer will benefit from incentives; and
  - 3. That the developer will be obligated to provide the most economical inclusionary units feasible in terms of construction, design, location and tenure; and
  - 4. That the developer is likely to obtain other housing subsidies where such funds are reasonably available.
- C. **Decision and further appeal.** The Council, upon legal advice provided by or at the behest of the City Attorney, will determine whether to grant the request and issue a written decision.

- D. **Modification of plan.** If the Council, upon legal advice provided by or at the behest of the City Attorney, determines that the application of the provisions of this Chapter would take property in violation of the U.S. or California Constitutions, the Inclusionary Housing Plan shall be modified, adjusted or waived to reduce the obligations under this Chapter to the extent necessary to avoid an unconstitutional result. If the Council determines no violation of the U.S. or California Constitutions would occur through application of this Chapter, the requirements of this Chapter remain applicable.

**22.60.120 - Affordable Housing Trust Fund.**

- A. **Fund established.** There is hereby established a separate Affordable Housing Trust Fund ("Fund"). This Fund shall receive all fees contributed under Sections 22.60.050 (In-Lieu Fees) and 22.60.060 (Alternatives), and may also receive monies from other sources.
- B. **Purpose and limitations.** Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to moderate-, low-, and very low-income households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Section.
- C. **Administration.** The fund shall be administered by the City Manager with the approval of the Council. The City Manager may develop procedures to implement the purposes of the Fund consistent with the requirements of this Chapter and any adopted budget of the City.
- D. **Expenditures.** Fund monies shall be used in compliance with the Housing Element, Redevelopment Plan, if any, or subsequent plan adopted by the Council to construct, rehabilitate or subsidize affordable housing or assist other governmental entities, private organizations or individuals to do so. Permissible uses may include assistance to housing development corporations, equity participation loans, grants, down payment assistance, pre-development loan funds, participation leases or other public-private partnership arrangements. The Fund may be used for the benefit of both rental and owner-occupied housing.
- E. **City Manager's annual report.** The City Manager shall report to the Council and Commission on the status of activities undertaken with the Fund. The report shall include a

statement of income, expenses, disbursements and other uses of the Fund. The report should also state the number and type of inclusionary units constructed or assisted during that year and the amount of assistance. The report will evaluate the efficiency of this Chapter in mitigating the City's shortage of affordable housing and recommend any changes to this Chapter necessary to carry out its purposes, including any adjustments to the number of units to be required.

**22.60.130 - Enforcement.**

- A. **Penalty for violation.** It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an affordable unit under this Chapter at a price or rent exceeding the maximum allowed under this Chapter or to sell or rent an affordable unit to a household not qualified under this Chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an inclusionary unit to obtain occupancy of housing for which he or she is not eligible.
- B. **Legal action.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including:
1. Actions to revoke, deny or suspend any permit, including a Building Permit, Certificate of Occupancy, or discretionary approval;
  2. Actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment from a violation of this Chapter, and/or enforcement costs, including attorneys fees;
  3. Eviction or foreclosure; and
  4. Any other appropriate action for injunctive relief or damages. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, household or other party from the requirements of this Chapter.

**SECTION 2. Chapter 22.62 of the Martinez Municipal Code is hereby added to read as follows:**

**CHAPTER 22.62 - DENSITY BONUSES**

**22.62.010 Purpose.**

As required by Government Code Section 65915, this Chapter offers density bonuses, and incentives or concessions for the development of housing that is affordable to the types of households and qualifying residents identified in Section 22.62.020. This Chapter is intended to implement the requirements of Government Code Section 65915, et seq., and the Housing Element of the General Plan.

**22.62.020 Eligibility for Bonus, Incentives or Concessions.**

In order to be eligible for a density bonus and other incentives or concessions as provided by this Chapter, a proposed housing development shall comply with the following requirements, and satisfy all other applicable provisions of this Title, including, but not limited to the provisions of Chapter 22.60, except as provided by Section 22.62.030 (Types of Bonuses and Other Incentives or Concessions Allowed).

**A. Resident requirements.** The housing development shall be designed and constructed so that:

1. At least 10 percent of the total number of proposed units are for lower income households, as defined in Health and Safety Code Section 50079.5; or
2. At least five percent of the total number of proposed units are for very low income households, as defined in Health and Safety Code Section 50105; or
3. At least 10 percent of the total dwelling units in a condominium project as defined in Civil Code Section 1351(f), or in a planned development as defined in Civil Code Section 1351(k), for persons and families of moderate income, as defined in Health and Safety Code Section 50093; or
4. The project is a senior citizen housing development as defined by Civil Code Sections 51.3 and 51.12.

A density bonus granted in compliance with Section 22.62.030 shall not be included when determining the number of housing units that is equal to the percentages required above.

- B. **Minimum project size to qualify for density bonus.** The density bonus provided by this Chapter shall be available only to a housing development of five or more dwelling units.
- C. **Condominium conversion projects.** A condominium conversion project for which a density bonus is requested shall comply with the eligibility and other requirements in Government Code Section 65915.5.

**22.62.030 - Allowed Density Bonuses.**

The amount of a density bonus allowed in a housing development shall be determined by the Council in compliance with this Section.

- A. **Density bonus.** A housing project that complies with the eligibility requirements in Sections 22.62.020.A.1, A.2, A3, or A.4 shall be entitled to density bonuses as follows, unless a lesser percentage is elected by the applicant.
  - 1. **General density bonus.** The City shall grant at least a 20 percent increase in the number of dwelling units normally allowed by the applicable General Plan designation and zoning, except that:
    - a. For each one percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent; and
    - b. For each one percent increase above five percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent, up to a maximum of 35 percent.
  - 2. **Bonus for condominium or planned development project.** A density bonus for a condominium project that complies with the eligibility requirements in Section 22.62.020.A.3 shall consist of at least a five percent increase in the number of dwelling units normally allowed by the applicable General Plan designation and zoning district, except that for each one percent increase above 10 percent of the percentage of units affordable to moderate-income

households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

**3. Density bonus for land donation.** When an applicant for a tentative map, parcel map, or other residential development approval donates land to the City in compliance with this Subsection, the applicant shall be entitled to a density bonus for the entire development, as follows; provided that nothing in this Subsection shall be construed to affect the authority of the City to require a developer to donate land as a condition of development.

a. **Basic bonus.** The applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable General Plan designation and zoning.

b. **Additional bonus.** For each one percent increase above the minimum 10 percent land donation described in Subsection A.3.c. (2), the density bonus shall be increased by one percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density required by Subsections A.1 and A.2, up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required in compliance with this Subsection A.3, and Subsections A.1, and/or A.2.

c. **Eligibility for bonus.** An applicant shall be eligible for the increased density bonus provided by this Subsection if all of the following conditions are met.

(1) 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.

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

(3) The transferred land is at least one acre, 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 proposed development shall be subject to subsequent design review to the extent authorized by Government Code Section 65583.2(I) if the design is not reviewed by the City prior to the time of transfer.

- (4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 22.62.060 (Continued Affordability), which shall be recorded on the property at the time of dedication.
- (5) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (6) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

B. **Greater or lesser bonuses.** The City may choose to grant a density bonus greater than provided by this Section for a development that meets the requirements of this Section, or grant a proportionately lower density bonus than required by this Section for a development that does not comply with the requirements of this Section.

- C. **Density bonus calculations.** The calculation of a density bonus in compliance with this Subsection that results in fractional units shall be rounded up to the next whole number, as required by State law. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels.
- D. **Requirements for amendments or discretionary approval.** The granting of a density bonus shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

**22.62.040 - Allowed Incentives or Concessions.**

- A. **Applicant request and City approval.** An applicant may submit to the City a proposal for the specific incentives or concessions listed in Subsection C. that the applicant requests in compliance with this Section, and may request a meeting with the Director. The Council shall grant an incentive or concession request that complies with this Section unless the Council makes either of the following findings in writing, based upon substantial evidence:

1. The incentive or concession is not required to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in Section 22.62.040.B (Rent cost requirements); or
2. The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment, or on any real property 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.

- B. **Number of incentives.** The applicant shall receive the following number of incentives or concessions.

1. One incentive or concession for a project that includes at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and

families of moderate income in a common interest development.

2. Two incentives or concessions for a project that includes 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.
3. Three incentives or concessions for a project that includes 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.

C. **Type of incentives.** For the purposes of this Chapter, concession or incentive means any of the following:

1. A reduction in the site development standards of the City's zoning ordinance (e.g., site coverage limitations, setbacks, reduced parcel sizes, and/or parking requirements (see also Section 22.62.050 (Parking Requirements in Density Bonus Projects), or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 et seq., that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions;
2. Approval of mixed-use zoning not otherwise allowed by this Title in conjunction with the housing development, if non-residential land uses will reduce the cost of the housing development, and the non-residential land uses are compatible with the housing project and the existing or planned development in the area where the project will be located;
3. Other regulatory incentives proposed by the developer or the City that will result in identifiable, financially sufficient, and actual cost reductions.

D. **Effect of incentive or concession.** The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval.

**22.62.050 - Parking Requirements in Density Bonus Projects.**

- A. **Applicability.** This Section applies to a development that meets the requirements of Section 22.62.030 (Allowed Density Bonuses), but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this Section in compliance with Section 22.62.040 (Allowed Concessions and Incentives).
  
- B. **Number of parking spaces required.** At the request of the developer, the City will require the following vehicular parking ratios for a project that complies with the requirements of Section 22.62.030 (Allowed Density Bonuses), inclusive of handicapped and guest parking.
  - 1. Zero to one bedrooms: One onsite parking space.
  - 2. Two to three bedrooms: Two onsite parking spaces.
  - 3. Four and more bedrooms: Two and one-half parking spaces.

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.

- C. **Location of parking.** For purposes of this Section, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

**22.62.060 Bonus and Incentives for Housing with Child Care Facilities.**

A housing development that complies with the resident and project size requirements of Section 22.62.020.A., and B., and also includes as part of that development a child care facility other than a large or small family day care home, that will be located on the site of, as part of, or adjacent to the development, shall be subject to the following additional bonus, incentives, and requirements.

- A. **Additional bonus and incentives.** The City shall grant a housing development that includes a child care facility in compliance with this Section either of the following:
  - 1. An additional density bonus that is an amount of floor area in square feet of residential space that is equal to or greater than the floor area of the child care facility; or

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

**B. Requirements to qualify for additional bonus and incentives.**

The City shall require, as a condition of approving the housing development, that:

1. 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 in compliance with Section 22.62.040 (Continued Availability of Affordable Units); and
2. 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 in compliance with Section 22.62.020.A.

The City shall not be required to provide a density bonus for a child care facility in compliance with this Section if it finds, based upon substantial evidence, that the community has adequate child care facilities.

**22.62.070 Continued Availability.**

**A. Duration of affordability.** The applicant shall agree to, and the City shall ensure the continued availability of the units that qualified the housing development for a density bonus and other incentives and concessions, as follows.

1. **Lower, low, and moderate income units.** The continued availability of lower, low, and moderate income qualifying units shall be maintained for 30 years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

**B. Rent cost requirements.** The rents charged for the housing units in the development that qualify the project for a density bonus and other incentives and concessions, shall not exceed the following amounts during the period of continued availability required by this Section:

1. **Lower income units.** 30 percent of 60 percent of the area median income, for units targeted for lower income households as defined in Health and Safety Code Section 50079.5; and
  2. **Very low income units.** 30 percent of 50 percent of the area median income, for units targeted for very low income households, as defined in Health and Safety Code Section 50105.
- C. **Occupancy and resale of moderate income condominium or PD units.** An applicant shall agree to, and the City shall ensure that the initial occupant of moderate-income units that are directly related to the receipt of the density bonus in a common interest development, are persons and families of moderate income, as defined in Health and Safety Code Section 50093.
1. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
  2. The City shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership. For purposes of this Section, the City's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

**22.62.080 Location and Type of Designated Units.**

- A. **Location/dispersal of units.** As required by the Council in compliance with Section 22.62.090 (Processing of Bonus Requests), units designated as affordable (designated units) shall be reasonably dispersed throughout the project where feasible, shall contain on average the same number of bedrooms as the non-designated units in the project, and shall be compatible with the design or use of remaining units in terms of appearance, materials, and finished quality.
- B. **Phasing.** If a project is to be phased, the density bonus units shall be phased in the same proportion as the non-density bonus units, or phased in another sequence acceptable to the City.

#### **22.62.090 Processing of Bonus Requests.**

- A. **Findings for approval.** The approval of a density bonus shall require that the review authority first make all of the following findings:
1. The residential development will be consistent with the General Plan, except as provided by this Chapter for density bonuses, and other incentives and concessions;
  2. The approved number of dwellings can be accommodated by existing and planned infrastructure capacities;
  3. Adequate evidence exists to indicate that the project will provide affordable housing in a manner consistent with the purpose and intent of this Chapter; and
  3. There are sufficient provisions to guarantee that the units will remain affordable for the required time period.

#### **22.62.100 - Density Bonus Agreement**

- A. **Agreement required.** An applicant requesting a density bonus shall agree to enter into a density bonus agreement ("agreement") with the City in the City's standard form of agreement.
- B. **Agreement provisions.**
1. **Project information.** The density bonus agreement shall include at least the following information about the project:
    - a. The total number of units approved for the housing development, including the number of designated dwelling units; and
    - b. A description of the household income group to be accommodated by the housing development, and the standards and methodology for determining the corresponding affordable rent or affordable sales price and housing cost consistent with HUD Guidelines; and
    - c. The marketing plan for the affordable units; and
    - d. The location, unit sizes (square feet), and number of bedrooms of the designated dwelling units; and

- e. Tenure of the use restrictions for designated dwelling units of the time periods required by Section 22.62.040 (Continued Availability); and
  - f. A schedule for completion and occupancy of the designated dwelling units; and
  - g. A description of the additional incentives being provided by the City; and
  - h. A description of the remedies for breach of the density bonus agreement by the owners, developers, and/or successors-in-interest of the project; and
  - i. Other provisions to ensure successful implementation and compliance with this Chapter.
2. **Minimum requirements.** The density bonus agreement shall provide, at minimum, that:
- a. The developer shall give the City the continuing right-of-first-refusal to lease or purchase any or all of the designated dwelling units at the designated affordable price; and
  - b. The deeds to the designated dwelling units shall contain a covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for designated units without the written approval of the City; and
  - c. When providing the written approval, the City shall confirm that the price (rent or sale) of the designated dwelling unit is consistent with the limits established for moderate, low- and very low-income households, as applicable, as published by HUD; and
  - d. The City shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households; and

- e. Applicable deed restrictions, in a form satisfactory to the City Attorney, shall contain provisions for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the Certificate of Occupancy; and
  - f. In any action taken to enforce compliance with deed restrictions, the City Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the City's costs of action including legal services; and
  - g. Compliance with the agreement will be monitored and enforced according to measures included in the agreement.
3. **For-sale housing conditions.** In the case of for-sale housing developments, the density bonus agreement shall provide for the following conditions governing the initial sale and use of designated dwelling units during the applicable restriction period:
- a. Designated dwelling units shall be owner-occupied by eligible households, or by qualified residents in the case of senior housing; and
  - b. The initial purchaser of each designated dwelling unit shall execute an instrument or agreement approved by the City which:
    - (1) Restricts the sale of the unit in compliance with this Chapter during the applicable use restriction period; and
    - (2) Contains provisions as the City may require to ensure continued compliance with this Chapter and State law; and
    - (3) Shall be recorded against the parcel containing the designated dwelling unit.
4. **Rental housing conditions.** In the case of a rental housing development, the density bonus agreement shall provide for the following conditions governing the use of designated dwelling units during the use restriction period:

- a. The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the designated dwelling units for qualified tenants;
- b. Provisions requiring owners to annually verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter;
- c. Provisions requiring owners to submit an annual report to the City, which includes the name, address, and income of each person occupying the designated dwelling units, and which identifies the bedroom size and monthly rent or cost of each unit; and
- d. The applicable use restriction period shall comply with the time limits for continued availability in Section 22.62.040 (Continued Availability).

**C. Execution of agreement.**

1. Following Council approval of the density bonus agreement, and execution of the agreement by all parties, the City shall record the completed agreement on the parcels designated for the construction of designated dwelling units, at the County Recorder's Office.
2. The approval and recordation shall take place at the same time as the final map or, where a map is not being processed, before issuance of Building Permits for the units.
3. The agreement shall be binding to all future owners, developers, and/or successors-in-interest.

**22.62.110 Control of Resale.**

In order to maintain the availability of for-sale affordable housing units constructed in compliance with this Chapter, the following resale conditions shall apply.

- A. The price received by the seller of an affordable unit shall be limited to the purchase price plus an increase based on the increase in the median income since the date of purchase, or the fair market value, whichever is less. Prior to offering an affordable housing unit for sale, the seller

shall provide written notice to the City of their intent to sell. The notice shall be provided by certified mail to the Director.

- B. Home ownership affordable units constructed, offered for sale, or sold under the requirements of this Section shall be offered to the City or its assignee for a period of at least 90 days from the date of the notice of intent to sell is delivered to the City by the first purchaser or subsequent purchasers. Home ownership affordable units shall be sold and resold from the date of the original sale only to households as determined to be eligible for affordable units by the City according to the requirements of this Section. The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.
- C. The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of the affordable ownership unit a declaration of restrictions provided by the City, stating the restrictions imposed in compliance with this Section. The grant deed shall afford the grantor and the City the right to enforce the declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Section.
- D. The City shall monitor the resale of ownership affordable units. The City or its designee shall have a 90-day option to commence purchase of ownership affordable units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the City for appropriate action.

**22.62.120 - Judicial Relief, Waiver of Standards.**

- A. **Judicial relief.** The applicant may initiate judicial proceedings if the City refuses to grant a requested density bonus, incentive, or concession.
- B. **Waiver of standards preventing the use of bonuses, incentives, or concessions.**

1. As required by Government Code Section 65915(e), the City will not apply a development standard that will have the effect of precluding the construction of a development meeting the criteria of Section 22.62.020.A at the densities or with the concessions or incentives permitted by this Chapter.
2. An applicant may submit to the City a proposal for the waiver or reduction of development and zoning standards that would otherwise inhibit the utilization of a density bonus on a specific site, including minimum lot size, side yard setbacks, and placement of public works improvements.
3. The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

C. **City exemption.** Notwithstanding the provisions of Subsections A. and B., nothing in this Section shall be interpreted to require the City to:

1. Grant a density bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction, would have a specific, adverse impact, as defined in Government Code Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
2. Grant a density bonus, incentive or concession, or 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

**SECTION 3. Section 22.04.255 of the Martinez Municipal Code is hereby added to read as follows:**

**22.04.255 Income Eligibility.**

"Income Eligibility" means the gross annual household income of a household considering household size, income of all wage earners in the household and all other sources of household income.

**SECTION 4. Section 22.04.352 of the Martinez Municipal Code is hereby added to read as follows:**

**22.04.352 Low Income.**

"Low Income" means Sixty (60) to eighty (80) percent of the Median Income Level for Contra Costa County as determined by the U.S. Department of Housing and Urban Development based upon the Primary Metropolitan Statistical Area (PMSA) median income levels by household size as published and amended from time to time.

**SECTION 5. Section 22.04.365 of the Martinez Municipal Code is hereby added to read as follows:**

**22.04.365 Moderate Income.**

"Moderate Income" means the income level determined as Moderate Income periodically for Contra Costa County by the U.S. Department of Housing and Urban Development based upon the Primary Metropolitan Statistical Area (PMSA) median income levels by household size as published and amended from time to time.

**SECTION 6. Section 22.04.575 of the Martinez Municipal Code is hereby added to read as follows:**

**22.04.575 Very Low Income**

"Very Low Income" means the income level determined as Very Low Income periodically for Contra Costa County by the U.S. Department of Housing and Urban Development based upon the Primary Metropolitan Statistical Area (PMSA) median income levels by household size as published and amended from time to time.

**SECTION 7. 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 8. Effective date.** This ordinance shall become effective 30 days after the date of adoption.

**SECTION 9. Posting.** At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez.

The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted ordinance.

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 \_\_\_ day of \_\_\_\_\_, 2008, and duly passed and adopted at a Regular Meeting of said City Council held on the \_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

## EXHIBIT C

### RESOLUTION NO. -08

#### ADOPTING AN IN-LIEU FEE SCHEDULE SETTING RATES FOR PAYMENT OF AFFORDABLE HOUSING IN-LIEU FEES AS ALLOWED BY SECTION 22.60 - INCLUSIONARY HOUSING OF THE MARTINEZ MUNICIPAL CODE

**WHEREAS**, the City Council added Chapter 22.60 - Inclusionary Housing to the Martinez Municipal Code as an affordable housing program; and

**WHEREAS**, section 22.60.050 of Chapter 22.60 allows a housing development of twenty or fewer units to comply with the requirements of the Chapter by paying an in-lieu fee as established by City Council by resolution, as it may be amended from time to time; and

**WHEREAS**, the fee schedule is attached herein as Exhibit No. 1; and

**WHEREAS**, the City Council may annually review the fee and may, based on the review, adjust the fee; and

**WHEREAS**, the fee is set to allow flexibility for smaller developments who by the nature of the development site or the project economics cannot build actual units, but still must comply with the Inclusionary Ordinance; and

**WHEREAS**, the fee is set to reasonably approach the cost of constructing physical units and yet not unduly burden the financial feasibility of development projects ; and

**WHEREAS**, the fee increases as the cost of the market price of housing increases thus encouraging the production of more affordable housing; and

**WHEREAS**, the collected fees will be deposited into the Affordable Housing Trust Fund as described in Section 22.60.120 of the Inclusionary Ordinance to be used as described therein; and

**WHEREAS**, the Planning Commission considered the in-lieu fee schedule at the February 26, 2008 meeting and recommended approval to the City Council; and

**WHEREAS**, the City Council finds that the in-lieu fee schedule is appropriate as a fair method to require all eligible projects to contribute to the production of affordable housing.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Martinez hereby adopts Exhibit No. 1 as the current in-lieu fee schedule for the City of Martinez.

\* \* \* \* \*

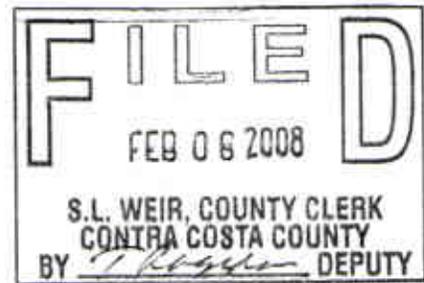
**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 5<sup>th</sup> day of March 2008, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ



## CITY OF MARTINEZ

### NOTICE OF PUBLIC REVIEW AND INTENT TO ADOPT A PROPOSED NEGATIVE DECLARATION

- PROJECT NAME:** Inclusionary Housing Ordinance and Density Bonus
- LEAD AGENCY:** City of Martinez  
525 Henrietta Street  
Martinez CA 94553
- PROJECT LOCATION:** City-wide
- PROJECT APPLICANT:** City of Martinez (Contact Person: Albert Lopez (925) 372-3534)
- PROJECT DESCRIPTION:** **Inclusionary Housing Ordinance:** Adoption of an ordinance that will require new residential projects to either designate a certain percentage of project units as affordable units or, in certain cases, pay a calculated in-lieu fee amount, per the requirements of the ordinance.
- Density Bonus:** Adoption of an ordinance to implement California State Density Bonus Law (Government Code Section 65915), requiring the City to offer density bonuses and incentives to developments that provide a certain percentage of their units as below market rate units.
- FINDINGS:** No potentially significant environmental impacts have been identified in the initial study. Therefore no mitigations measures are required. It is hereby determined that, based on the information contained in the attached Initial Study, the project would not have a significant adverse effect on the environment.
- INITIAL STUDY:** The Initial Study and proposed Negative Declaration can be reviewed at the City of Martinez's Community Development Department, Martinez City Hall, 525 Henrietta Street, Martinez, CA 94553, which is open from 8:00 a.m. to 12 noon and 1:00 p.m. to 5:00 p.m.. This environmental review process and Negative Declaration filing is pursuant to Title 14, Division 6, Chapter 3, Article 6, sections 15070, 15071, and 15072 of the California Administrative Code.

**PUBLIC HEARING:**

**A 20-day public comment period on this Initial Study / Proposed Negative Declaration begins on Tuesday, February 5th 2008 and ends on Monday February 25<sup>th</sup>, 2008.** Written comments regarding this project addressing the findings of the proposed Negative Declaration and/or accuracy or completeness of the Initial Study, may be submitted to the City of Martinez Community Development Department (at the above address) during this comment period. **A public hearing before the City of Martinez Planning Commission to consider the Negative Declaration and the proposed ordinances is scheduled on February 26<sup>th</sup>, 2008 at 7:00 PM.** A public hearing before the City of Martinez City Council is scheduled for March 5<sup>th</sup>, 7:00 PM. All hearings and meetings will be located in the Martinez City Hall Council Chamber, 525 Henrietta Street, Martinez, CA 94553.



City of Martinez  
Albert Lopez  
Deputy Director  
(925) 372-3534

# CITY OF MARTINEZ

## Initial Study

1. **Project title:** Inclusionary Housing and Density Bonus Ordinance
2. **Lead agency name and address:** City of Martinez  
Community Development Department  
525 Henrietta Street  
Martinez, CA 94553
3. **Contact person and phone number:** Albert Lopez, Deputy Director (925) 372-3534
4. **Project location:** Citywide
5. **Project sponsor's name and address:** City of Martinez  
Community Development Department  
525 Henrietta Street  
Martinez, CA 94553
6. **General Plan:** LAND USE ELEMENT - All areas designated for Residential- and Mixed-Use
7. **Zoning:** All Residential and Mixed Use Zoning Districts
8. **Description of project:** Adoption of an Inclusionary Housing Ordinance that will require new residential projects to either designate a certain percentage of project units as affordable units or, in certain cases, pay a calculated in-lieu fee amount, per the requirements of the ordinance; and adoption of an ordinance to implement California State Density Bonus Law (Government Code Section 65915), requiring the City to offer density bonuses and incentives to developments that provide a certain percentage of their units as below market rate units.
9. **Surrounding land uses and setting:** N/A
10. **Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement).** No other public agency approval is required.
11. **Other project Assumptions:** The Initial Study assumes compliance with all applicable State, Federal, and Local Codes and Regulation including, but not limited to the City of Martinez Improvement Standards, the California Building Code, the Contra Costa County Water Agency Code, the Contra Costa County Flood Control Water Conservation District Design Criteria and Standards, the State Health and Safety Code, and the State Public Resources Code.

**DETERMINATION:** (To be completed by the Lead Agency)

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a potentially significant impact or potentially significant unless mitigated impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

February 5, 2008

Albert Lopez, Deputy Community Development Director

Date

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Aesthetics                    | <input type="checkbox"/> Agriculture Resources              | <input type="checkbox"/> Air Quality              |
| <input type="checkbox"/> Biological Resources          | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology / Soils          |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality          | <input type="checkbox"/> Land Use / Planning      |
| <input type="checkbox"/> Mineral Resources             | <input type="checkbox"/> Noise                              | <input type="checkbox"/> Population / Housing     |
| <input type="checkbox"/> Public Services               | <input type="checkbox"/> Recreation                         | <input type="checkbox"/> Transportation / Traffic |
| <input type="checkbox"/> Utilities / Service Systems   | <input type="checkbox"/> Mandatory Findings of Significance |   |

**EVALUATION OF ENVIRONMENTAL IMPACTS:**

1. A brief explanation is provided in the Discussion section for all answers except “No Impact” answers that are adequately supported by the information sources cited in the question. A “No Impact” answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer is explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
2. All answers take account of the entire action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. “Potentially Significant Impact” is appropriate if there is substantial evidence that an effect is significant. If there are one or more “Potentially Significant Impact” entries when the determination is made, an EIR is required.
4. “Potentially Significant Unless Mitigation Incorporated” applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less than Significant Impact”. Mitigation measures are described and how they reduce the effect to a less than significant level. Measures from earlier analyses may be cross-referenced.
5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or Negative Declaration.
6. Where ever possible references to information sources for potential impacts (e.g., general plans, zoning ordinances) are incorporated into the checklist. Where appropriate, a reference to the page or pages where the statement is substantiated is included. A source list is attached, and other sources used, or individuals contacted, are cited in the discussion.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
<b>I. AESTHETICS — Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?				X
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?				X

**Discussion:**

- a-d) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to aesthetic resources. All future housing projects subject to the ordinance will be subject to project specific CEQA review. The CEQA analysis will determine if there are any impacts to aesthetic resources resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				X
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?				X
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				X

**Discussion:**

a-c) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to agricultural resources. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any impacts to agricultural resources resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
III. AIR QUALITY — Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?				X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?				X
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?				X
d) Expose sensitive receptors to substantial pollutant concentrations?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
e) Create objectionable odors affecting a substantial number of people?				X

**Discussion:**

a-e) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to air quality. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any impacts to air quality resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES — Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

**Discussion:**

a-f) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to biological resources. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will analyze any impacts to biological resources resulting from the development of the specific project and recommend mitigation measures if needed.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES — Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X

**Discussion:**

a-d) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to cultural resources. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any impacts to cultural resources resulting from the development of the specific project

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
VI. GEOLOGY AND SOILS — Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
• Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				X
• Strong seismic ground shaking?				X
• Seismic-related ground failure, including liquefaction?				X
• Landslides?				X
b) Result in substantial soil erosion or the loss of topsoil?				X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?				X

**Discussion:**

a-e) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to geology or soils. All future housing projects subject to the ordinance will be subject to project specific CEQA review including soils reports if warranted. That CEQA analysis will determine if there are any geological or soils impacts resulting from the development of the specific project and recommend mitigation measures if needed.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
<b>VII. HAZARDS AND HAZARDOUS MATERIALS</b>				
— Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
h) Expose people or structures to a significant risk of loss, injury or death involving wild land fires, including where wild lands are adjacent to urbanized areas or where residences are intermixed with wild lands?				X

**Discussion:**

a-h) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to hazards or hazardous materials. All future housing projects subject to the ordinance will be subject to project specific CEQA review. The CEQA analysis will determine if there are any hazards or hazardous materials impacts resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY — Would the project:				
a) Violate any water quality standards or waste discharge requirements?				X
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or off-site?				X
e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?				X
f) Otherwise substantially degrade water quality?				X
g) Place a building within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				X
h) Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?				X
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				X
j) Inundation by seiche, tsunami, or mudflow?				X

**Discussion:**

a-j) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to hydrology or water quality. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any impacts to water quality or hydrology resulting from the development of the specific project and recommend mitigation measures if needed.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
IX. LAND USE AND PLANNING -- Would the project:				
a) Physically divide an established community?				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?			X	

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

**Discussion:**

a-c) Although adopting the Inclusionary Housing and Density Bonus Ordinances may facilitate affordable housing development, it will not result in any significant impacts to existing Land Use and Planning policies. Existing General Plan policies of the adopted Housing Element require the City to create both of these ordinances, and as such the ordinances are consistent with the General Plan. There is a possibility that a project seeking incentives or concessions as part of a Density Bonus, by the nature of building more units in a location where those units would otherwise not be permitted, or in such a manner that they could create a significant impact. However, Density Bonus law (see section 22.62.040 of the proposed ordinance) allows the City discretion in approving incentives and concessions if the project results in specific adverse impacts, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are land use or planning impacts resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES — Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				X

**Discussion:**

a-b) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to mineral resources. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any impacts to mineral resources resulting from the development of the specific project.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XI. NOISE — Would the project:				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				X

**Discussion:**

a-f) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to noise. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any noise impacts resulting from the development of the specific project and recommend mitigation measures if needed.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
<b>XII. POPULATION AND HOUSING</b> — Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				X

**Discussion:**

a-c) Although adopting the Inclusionary Housing and Density Bonus Ordinances may facilitate affordable housing development, it will not result in any significant impacts from population growth or additional housing units. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any environmental impacts resulting from the project's population growth development of the specific project.

The 2006 Housing Element expands upon City policies for residential land uses as defined and described in the Land Use Element of the General Plan. The Housing Element calls for the City's consideration of an Inclusionary Housing Ordinance, which would require residential projects to either a) provide a certain percentage of total units on site as Affordable Housing (as defined by the State) to very low, low and moderate-income households; or b) have the developers of such project pay an in-lieu fee to support Affordable housing developments elsewhere within the City. In addition, the Housing Element requires the City to codify the Density Bonus requirements of State law.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES —				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
• Fire protection?				X
• Police protection?				X
• Schools?				X
• Parks?				X
• Other public facilities?				X

**Discussion:**

a) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to public services. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any environmental impacts resulting from the development of the specific project. In

addition, proposed projects will also be required to meet the standards of the City's Growth Management Element.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XIV. RECREATION —				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				X

**Discussion:**

a-b) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to recreation. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any environmental impacts resulting from the development of the specific project. Park dedication fees pursuant to the City Code will be required for all projects, regardless if they are subject to the Inclusionary Ordinance or have sought a Density Bonus.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XV. TRANSPORTATION/TRAFFIC — Would the project:				
a) Cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				X
e) Result in inadequate emergency access?				X
f) Result in inadequate parking capacity?				X

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				X

**Discussion:**

a-g) Adopting the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to transportation/traffic. All future housing projects subject to the ordinance will be subject to project specific CEQA review and appropriate traffic studies if required. That CEQA analysis will determine if there are any transportation/traffic impacts resulting from the development of the specific project and recommend mitigation measures if necessary. In addition, proposed projects will also be required to comply with the standards of the City's Growth Management Element.

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS — Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				X
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X
e) Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				X
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X
g) Comply with federal, state, and local statutes and regulations related to solid waste?				X

**Discussion:**

a-g) Adoption of the Inclusionary Housing and Density Bonus Ordinances will not result in any impacts to utilities or service systems. All future housing projects subject to the ordinance will be subject to project specific CEQA review. That CEQA analysis will determine if there are any environmental impacts resulting from the development of the specific project. In addition, future projects will be required to comply with the standard of the City's Growth Management Element.

		Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact
XVII.	MANDATORY FINDINGS OF SIGNIFICANCE —				
	a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?				X
	b) Does the project have impacts that are individually limited, but cumulatively considerable? (±Cumulatively considerable± means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)				X
	c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?				X

**Discussion**

a-c) Adopting the Inclusionary Housing Ordinance does not have the potential to degrade the environment, affect fish or wildlife habitat, threaten or eliminate a plant or animal community, nor result in significant impacts to cultural resources. The adoption of the proposed Ordinance will not result in substantial adverse effects on human beings. Finally, the adoption of the proposed Ordinance does not result in considerable cumulative impacts.

**REFERENCE DOCUMENTS**

1. City of Martinez General Plan, Land Use Element – including Specific Area Plans; 1973, and as subsequently amended and updated
2. City of Martinez Housing Element; 2006

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## City of Pleasant Hill

February 19, 2008



Albert Lopez  
City of Martinez  
525 Henrietta St.  
Martinez, CA 94553

Re: Inclusionary Ordinance Neg Dec.

Dear Mr. Lopez:

Thank you for the notification of the opportunity to comment on the City of Martinez intent to adopt a proposed Negative Declaration for proposed Inclusionary Housing Ordinance and the proposed Density Bonus Ordinance.

At this time, the City of Pleasant Hill does not have any comments related to this action.

Sincerely,

A handwritten signature in blue ink that reads "David Boatwright".

David Boatwright  
Housing Coordinator



February 25, 2008



Albert Lopez, Deputy Director  
City of Martinez  
Community Development Department  
525 Henrietta Street  
Martinez, CA 94553

**SUBJECT: City of Martinez Inclusionary Housing and Density Bonus Ordinance  
Initial Study/Negative Declaration**

Dear Mr. Lopez:

Thank you for including the Contra Costa Local Agency Formation Commission (LAFCO) in the environmental review process for the above project.

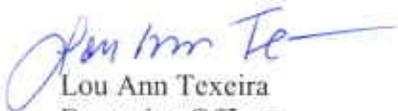
As you know, LAFCO is an independent agency with discretion to approve or disapprove, with or without amendment, wholly, partially or conditionally, boundary changes. LAFCO is required to consider a variety of factors when evaluating a proposal, including, but not limited to the proposed project's potential impacts upon agricultural land and open space, the provision of municipal services, including the timely and available supply of water, adequate and proximate affordable housing, etc.

While adoption of the Inclusionary Housing and Density Bonus Ordinance has no direct implication for LAFCO, we do have an interest in the subject. In consideration of a boundary change proposal (e.g., annexation), LAFCO must consider all of the factors pursuant to Government Code §56668 (attached). You will note that factor 56668(1) deals with the extent to which a proposed boundary change will effect the respective fair share of the regional housing needs as determined by the regional council of governments (ABAG).

Once again we thank City of Martinez for the opportunity to comment and commend the City for its efforts.

Please contact the LAFCO office if you have any questions.

Sincerely,

  
Lou Ann Teixeira  
Executive Officer

Attachment

c: LAFCO Planners

**Government Code §56668.** Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

- (a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas during the next 10 years.
- (b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion of alternate courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services", as used in this subdivision, refers to governmental services whether or not the services are those which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.
- (c) The effect of the proposed action and of alternative actions on adjacent areas, on mutual social and economic interests, and on the local government structure of the county.
- (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development; and the policies and priorities set forth in Government Code §56377.
- (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Government Code §56016.
- (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.
- (g) Consistency with city or county general and specific plans.
- (h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.
- (i) The comments of any affected local agency.
- (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for such services following the proposed boundary change.
- (k) Timely availability of water supplies adequate for projected needs including, but not limited to, the projected needs as specified in §65352.5.
- (l) **The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.**
- (m) Any information or comments from the land owners or owners, voters or residents of the affected territory.
- (n) Any information relating to existing land use designations.
- (o) *The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. (effective 1/1/08)*

MINUTES  
CITY OF MARTINEZ  
PLANNING COMMISSION  
February 26, 2008

**CALL TO ORDER/ROLL CALL**

Chair Frank Kluber called the meeting to order at 7:05 p.m. with all members present except Commissioners Avila and Hughes, who were excused, and Commissioner Burt, who arrived after roll call.

Staff present: Veronica Nebb, City Attorney;

Albert Lopez, Deputy Community Development Director.

**AGENDA CHANGES**

Deputy Community Development Director Albert Lopez noted that Items 2 and 3 would be continued to a future meeting.

**PUBLIC COMMENT**

None.

**CONSENT ITEMS**

1. Minutes of January 29, 2008, meeting.

Item continued to the next meeting, due to lack of a quorum.

**REGULAR ITEMS**

2. Harbor View Reservoir UP #08-04 Public hearing on the replacement of an existing 1,250,000 gallon reservoir with new 1,650,000 gallon reservoir. The existing reservoir was built in 1964, and a 2001 reservoir inspection found signs of deterioration. The project will secure and expand the reservoir to meet the projected needs of the City according to its adopted Water System Master Plan Update. In addition, the overflow elevation of the existing reservoir is approximately 20 feet higher than those of other reservoirs in its service zone (Zone I), effecting the maintenance of the desired uniform distribution. The City's Harbor View reservoir is located approximately 1,500 feet south of the intersection of Harbor View Drive and Shell Avenue. The existing reservoir property occupies approximately 1.1 acres, and adjoins the rear property lines of 2536-2544 Pine Street. The Assessors Parcel Number (APN) is 376-010-005. (This item will be continued to a future date)

Item continued to a future date.

3. 630 Court Street Resolution of the Planning Commission finding that the disposition of 630 Court Street is consistent with the Martinez General Plan and all applicable specific plans.

Item continued to a future date.

4. Inclusionary Housing Ordinance and Density Bonus Public Hearing to consider adoption of an Inclusionary Housing Ordinance that will require new residential projects to either designate 15% of project units as affordable units or, in certain cases, pay a calculated in-lieu fee amount, per the requirements of the ordinance. Also under consideration is a Density Bonus Ordinance as required by State Law to allow for density bonuses, incentives and concessions to projects that provide a percentage of their units as affordable. At the public hearing the Planning Commission and City Council will also consider and adopt, respectively, the Negative Declaration prepared for this project, finding that no significant environmental impacts will result from approval of this project.

Deputy Community Development Director Albert Lopez presented the staff report, reviewing the process thus far and the provisions of the proposed ordinance. (Commissioner Burt entered and was seated during his presentation.) Mr. Lopez also discussed correspondence received from the city of Pleasanton and LAFCO. He noted that staff is asking for a formal recommendation to the City Council.

Vice Chair Korbmacher asked for clarification on the in-lieu fee option, which staff provided.

Commissioner Busby asked for specifics on the applicability of the ordinance, as well as the possibility for exemptions.

Commissioner Allen clarified further details, based on a specific example, Mr. Evans' property. Staff and the Commission discussed various aspects of the ordinance.

Mr. Lopez also discussed impacts from not enacting an inclusionary ordinance, with City Attorney Veronica Nebb providing further information on possible legal action that could result.

Mr. Lopez concluded by reviewing the exhibits in the staff report, including the possible resolution, findings and CEQA requirements.

Commissioner Burt expressed appreciation for the work done by the task force and staff, acknowledging the need for the ordinance. She asked about the density bonus, specifically, what grounds the City could use to deny it. Mr. Lopez reviewed findings that would need to be made, with Ms. Nebb giving practical applications based on state law.

Commissioner Busby asked the current balance of the Housing Trust Fund, and how the fund could be used, which staff provided. Commissioner Busby expressed concern that the trust fund could be shifted into the General Fund to cover administrative costs of the program.

Commissioner Allen questioned how the program would be monitored, if not through a City staff person. Ms. Nebb reviewed other ways that the monitoring could be done, as well as discussing common reporting requirements.

Commissioner Allen asked, and staff responded to questions about contracting costs, the density bonus qualification process, the definition of "senior" projects, and the Housing Trust Fund.

Commissioner Burt questioned whether this was the best ordinance for the current and future housing market. Ms. Nebb explained that with fees based on housing prices, the fee will be self-adjusting as the market fluctuates.

Commissioner Allen asked for specifics of other ordinances in other jurisdictions (successes and failures) as well as alternatives. She also questioned whether this is the time or method for providing affordable housing, given the current market downturn.

Chair Kluber said the Housing Task Force spent a year discussing the same issues and questions in developing the current proposed ordinance. Commissioner Allen asked if the information could be shared with the Commission. Commissioner Busby asked if the downturn in the market was discussed in the task force meetings.

Ms. Nebb clarified that density bonus provisions were the response to a state mandate and needs to be done as soon as possible. Regarding the Inclusionary Ordinance, she discussed Housing Element provisions that also need to be complied with. She acknowledged that the City Council and Planning Commission would make the decisions ultimately. She also provided some information on her experience with other jurisdictions and their programs.

Staff and the Commission discussed different program charges given by the state in certifying the City's Housing Element. Mr. Lopez offered to provide more background information to those Commissioners who want it.

Commissioner Burt acknowledged the openness of the Housing Task Force process as well as the state mandates involved. She reiterated her earlier question as to whether this ordinance will fit the different economic situation that now exists. She suggested their some review of the effectiveness of the ordinance after it is enacted. Mr. Kluber agreed that could address the concerns expressed by the Commission. Ms. Nebb noted that staff could use the required annual report to the state to accomplish the same goal.

Commissioner Allen asked for further information on the specific mandates from the state, and Ms. Nebb reviewed the three areas.

Mr. Lopez also gave specific numbers related to the state requirement. Ms. Allen asked how the numbers were determined, and staff explained the methodology used by the state.

Chair Kluber asked about the possibility of petitioning the state for some relief, and Ms. Nebb discussed state action that could result while waiting for certification of the City's Housing Element. She also acknowledged there is no current penalty, but the state is considering possible repercussions for failure to meet the City's obligations.

Mr. Lopez noted it already could affect the City's competitiveness for grants.

Ms. Nebb noted that the state has vacillated regarding inclusionary ordinances as opposed to pushing for high density zoning. She also noted that the state's certification of the Housing Element was partially based on the new Downtown Specific Plan. In response to a further

question from Commissioner Allen, staff confirmed the City has already met some of its requirements.

Chair Kluber opened public comment on the item.

GAIL RODENS, Housing Task Force member, acknowledged this ordinance alone will not solve the affordable housing crisis in the City, but it will be one tool. She asked the Commission to trust that the task force did the best job it could, based on the direction and authority given them. She asked for a recommendation of approval to the City Council.

PAUL WILSON reiterated his earlier concerns about the prejudicial and discriminatory nature of Housing Element, since most of the proposed properties are on the north side of Highway 4. He was also concerned about potential massing of low income housing in only one area of the City, and he cautioned against special treatment for Downtown Specific Plan property owners. As a resident of the downtown, he said he was very concerned about impacts on his quality of life. He was opposed to density bonuses also, commenting on the potential effects on height limits, setbacks, and parking.

MIKE ALFORD commented on similar problems resulting from increased residential density in Antioch. He questioned what happened to earlier trust fund allocations. He also asked for a definition of affordable housing and expressed concern about disincentives to developments. He suggested a senior gated community in the downtown area, which would reduce crime and improve the economy of the City. He also noted that the City already has more than its share of government-assisted housing.

Seeing no further speakers, Chair Kluber closed public comment.

#### Commission Comment

Commissioner Allen said she would like resolution to her questions before voting on the issue. Specifically, she would like to see some alternatives to inclusionary zoning, more information about the successes/failures of other jurisdictions, and even to visit a project. She expressed a basic philosophical problem with the concept, but acknowledged something needs to be done. She was also concerned that the cost for affordable units will be passed on to those "in the middle" financially, resulting in them being priced out of the market. She reminded the Commission of the Downtown Specific Plan goal for ownership housing, not rental. She suggested alternative incentives for developments with more homes, but smaller or different type units. She also asked for expanded alternatives to the in-lieu fee, as well as uses for the Housing Trust Fund, and the definition for senior housing.

Commissioner Busby indicated she was not willing to go forward with an ordinance yet;

Chair Kluber moved to adopt the resolution, recommending approval of the ordinance by the City Council. The motion was withdrawn after Vice Chair Korbmacher indicated he wanted to make further comments.

Vice Chair Korbmacher said there is similar program already in place in Danville that works very well; he indicated his willingness to show examples of affordable units there. He was

concerned about the need to raise the threshold (perhaps to 10 units) for the in-lieu requirement, since most properties in Martinez will be infill projects.

Chair Kluber noted that Commissioner Avila-Farias and husband Isidro (builders of many infill projects in the City) were the impetus in allowing an in lieu fee for projects with less than 10 units. Mr. Lopez noted that the exemption clause also resulted from input from others in the development community.

Commissioner Burt urged the Commission to take action and pass the item onto the Council, with the changes suggested including a one-year review of the ordinance and adjust as needed.

Chair Kluber agreed it is appropriate to take action, since sufficient analysis has taken place already.

On motion by Harriett Burt, seconded by Frank Kluber, the Commission present voted to recommend that the City Council adopt, respectively, the Negative Declaration prepared for this project, finding that no significant environmental impacts will result from approval of this project. **(Albert should check this motion and amend it as necessary.)** by the following vote: Ayes: Frank Kluber, Fred Korbmacher, and Harriett Burt; Noes: Donna Allen, and Lynette Busby (Absent: Avila and Hughes).

5. General Plan Update - Study session to discuss the General Plan update process- includes power point presentation by Staff. No formal action is taken in the Study Session. (Continued from the January 22, 2008, meeting)

Deputy Community Development Director Albert Lopez presented the staff report and responded to questions from the Commission about the process.

The Commission commented on the need for an expedited timeline, including sufficient community input and qualified facilitators for the community meetings.

Commissioner Burt asked if a hybrid of the "top-down" and "bottom-up" processes was possible. She also commented on the piecemeal GPA amendments previously done. She agreed there is a definite need for community input - especially if they are really listened to.

Chair Kluber agreed, especially with the need to hire skilled professionals to manage some of the public input process. Commissioner Allen agreed that the expedited process mentioned by Commissioner Busby could work.

Commissioner Allen asked if there is any way to put together a summary of what is currently in effect.

Vice Chair Korbmacher said he thought the focus should be on cleaning up the current General Plan. He expressed concern about open space, especially in residential areas, indicating that changing them should require a public vote. He also noted that the downtown area is the most difficult issue, but since the Downtown Specific Plan will be part of final General Plan and it's already done.

City Attorney Nebb noted that most successful facilitators should not have preconceived ideas about the outcome of the Plan - suggesting that the City separate the facilitator from the consultant who writes the Plan.

Chair Kluber expressed concern about preconceived ideas about the community. Mr. Lopez agreed separating the writing from the facilitating is a good idea.

Commissioner Allen expressed concern about too extended of a process, so that re-education of the public is lessened. She also asked how to decide what needs to be amended. She suggested a summary of the current policies, then looking at the Plan itself for redlining, etc.

The Commission discussed what elements should be included and which process, concluding that...**LAURA, ALBERT SAID HE WOULD FILL IN HERE,**

Mr. Lopez said he would draft a summary of the Commission input and bring it back to the Commission for confirmation. He expressed concern that there be enough time to gather input from all segments of the community.

There was some discussion of the best way to advertise public meetings.

Mr. Lopez asked for clarification on the process preferred by the Commissioner. Commissioner Burt said an advisory group appointed by the Mayor might be good to decide the elements that need to be included and/or revised.

Commissioner Busby concern that that might be too technical, noting that the- consultant or staff might be better qualified, although she acknowledged the need for public input at some point in the process.

Chair Kluber suggested that the selection process for consultant should involve some Planning Commissioners, Councilmembers, etc. There was discussion of the best way to choose consultant/facilitator.

Mr. Lopez summarized preferences of Commission as to the process etc.: **LOPEZ CAN FILL IN MORE HERE IS HE THINKS IT NECESSARY.**

### **COMMISSION ITEMS**

Vice Chair Korbmacher asked about the upcoming League of Cities conference . After a brief discussion, Mr. Lopez said he would pass the information on to the Commission when he receives it.

### **STAFF ITEMS**

None.

### **COMMUNICATIONS**

There was some discussion of sound difficulties with the City Council meetings.

**ADJOURNMENT**

Chair Kluber adjourned the meeting at 10:17 p.m., to the next regularly scheduled meeting of March 11, 2008.

Respectfully submitted,

Approved by the Planning Commission

Chairperson

Transcribed by, Mary Hougey

Frank J. Kluber

DRAFT

MINUTES  
CITY OF MARTINEZ  
PLANNING COMMISSION  
January 29, 2008

**CALL TO ORDER/ROLL CALL**

Chair Frank Kluber called the meeting to order at 7:10 p.m. with all members present except Commissioners Allen, Busby, and Korbmacher.

Staff present: Veronica Nebb, City Attorney  
Karen L. Majors, Assistant City Manager/Community Development Director  
Albert V. Lopez, Deputy Community Development Director

**AGENDA CHANGES**

Deputy Community Development Director Albert Lopez said the Inclusionary Housing Ordinance (Item #3) would be heard before the General Plan Update process (Item #2), which would be postponed to a later meeting if there is no time tonight.

**PUBLIC COMMENT**

PAUL WILSON commented on the recent trend towards higher density and expressed concern about fire safety with buildings so close together. He requested additional fire sprinklers requirements.

**CONSENT ITEMS**

1. *Minutes of November 13, 2007, meeting.*

On motion by Harriett Burt, Planning Commissioner, seconded by Mark Hughes, Planning Commissioner, the Commission present voted to approve the minutes of November 13, 2007, meeting.

Motion unanimously passed 4 - 0 (Commissioners Allen, Busby, and Korbmacher absent).

**REGULAR ITEMS**

Item #3 taken out of order.

3. *Inclusionary Housing - Study session to review proposed zoning text amendments to the Martinez Municipal code Chapter 22.60 - Inclusionary Housing, and Chapter 22.62 - Density Bonuses, to create an affordable housing program including both an inclusionary housing and density bonus component. At this meeting the Planning Commission will consider and discuss a proposed affordable housing (inclusionary) ordinance, that would require new housing developments (4 units and greater) to set-aside 15% percent of the total units for low-income households; and allow density bonuses and concessions /incentives to housing developments offering below market rate (BMR) units to eligible households. No formal action is taken in the Study Session. Applicant: City of Martinez (AL)*

Deputy Community Development Director Albert Lopez presented the staff report, highlighting members of the Housing Task Force listed at the back of the document. He reviewed the background history of the ordinance, the work of the Housing Task Force, and details of the proposed new sections for the Municipal Code.

Commissioner Burt asked about eligibility requirements, specifically who and how the list will be formed, and how the notice will be given. City Attorney Veronica Nebb said primarily through newspaper notice, but other outreach methods can be used as well - either marketing by the developer or an associated lender. She reviewed various possibilities for handling the list, based on what other jurisdictions have done.

Mr. Lopez also noted that some exemptions could be allowed, with City Council approval, and Ms. Nebb gave information on the term of the inclusionary requirement. Mr. Lopez added that developers would be required to enter an Inclusionary Housing agreement covering all the conditions and requirements of the Ordinance. He also noted that in-lieu fees will go into the City's housing trust fund to be used for various assistance programs.

Mr. Lopez briefly discussed the density bonus provisions, as required by state law. Commissioner Burt expressed concern about the 35% bonus; Ms. Nebb said it was unfortunately straight from state law.

Mr. Lopez noted the City is also required to offer other concessions and incentives. Ms. Nebb commented that such concessions are rarely requested, due to additional review allowed of the developer's books as a result. Commissioner Avila noted that the Housing Task Force spent much time on this to be sure it will work with state law and the needs of the community. Mr. Lopez commented further on how density bonuses are calculated, based on affordability of the units.

Commissioner Burt asked whether more noticing options should be listed in the Ordinance, as currently it only mentions the newspaper. Staff agreed additional language could be added, although Ms. Nebb was concerned that there be sufficient clarity for the developer in knowing how and where noticing should occur.

Commissioner Avila explained how the information can be transmitted, usually through the housing coordinator (whether a City employee, the Housing Authority or another agency). She noted most cities have some information on their websites as well. She also noted that a marketing plan is usually required for below-market housing.

Commissioner Hughes asked why the line for the inclusionary requirement was drawn at 20+ units. He also asked what future uses staff contemplated for the housing trust fund. Mr. Lopez acknowledged that nonprofit groups might have better fund leverage, but the Housing Task Force felt that development market in Martinez seems to be focusing on smaller projects.

Ms. Nebb said it would be difficult to justify charging a disproportionate fee, which would be necessary if an increased in-lieu fee was allowed instead of requiring affordable units be built. She also noted that typically, more developers will opt for in-lieu fee payment which means fewer units will be built.

Commissioner Hughes asked why not make the fee higher, and Ms. Nebb discussed economy of sale considerations for developers and nonprofit groups, as well as market conditions that might deter development. Commissioner Avila noted that the Housing Task Force also looked at the parcels identified in the Housing Element and the lower likelihood for larger developments.

Mr. Lopez mentioned other alternatives for developers instead of the fee. Assistant City Manager/Community Development Director Karen Majors commented on the broad experience of the Housing Task Force members, and reports/results from other jurisdictions.

Commissioner Hughes asked if the exemption language in the ordinance was customary. Ms. Nebb responded that the first three exemptions come from lessons learned by other ordinances, with the last one allowing for unexpected circumstances on a case-by-case basis.

Commissioner Burt expressed concern with the proposed exemption process, particularly suggesting that the Planning Commission be involved and given a chance for discussion/recommendation without political overtones. Ms. Nebb acknowledged that Planning Commission review could be added to the exemption process. The rest of the Commission agreed with Commissioner Burt's suggestion.

Commissioner Burt asked about the "change in title" requirements, and staff agreed to review that section further.

Mr. Lopez concluded by stating that both programs will work together to implement provisions of the City's Housing Element, as well as meeting state law regarding density bonuses. He briefly discussed the further process for drafting and enacting the ordinance, including negative declaration, etc.

Chair Kluber asked about staff's response to Commissioner Allen's email. Mr. Lopez said her email would be included in the public record, but he had no formal response at this time. Commissioner Avila noted that some of Commissioner Allen's issues had been addressed under the section dealing with administration and fairness.

Commissioner Burt asked for clarification on the bonus and incentive for housing with a childcare facility - specifically who will oversee the facility afterwards. Ms. Nebb said the City would be responsible, adding that such requests are very rare because of the limitations and restrictions.

Chair Kluber opened public comment.

DAVID PIERSALL commented on the fact that the housing bubble has burst since the process for this ordinance had begun, as a result of concessions made to expand home ownership possibilities. He questioned whether an inclusionary ordinance will even be necessary once the current real estate situation stabilizes. He suggested the Planning Commission postpone the ordinance until a later date.

PAUL WILSON commented on the long-term ownership requirement and whether homes can be

passed on to heirs, etc. He was also concerned about potential preferential treatment for downtown property owners. He noted that the Housing Element is mainly focused on the north side of Highway 4, thereby restricting opportunities for low income families to live in more affluent neighborhoods. He indicated he would like to see the Housing Element metered equally throughout the community, with no preferential treatment for anyone.

#### Commission Comment

Commissioner Burt asked staff to respond to Mr. Wilson's concerns about areas eliminated from the Housing Element. Mr. Lopez said the Inclusionary Ordinance would apply to development throughout the City. He acknowledged that most of the opportunity sites were north of Highway 4, but that was not intentional, just where the properties happened to be.

Ms. Nebb noted that the ordinance does not limit an owner's ability to bequeath the property, only the recipient's ability to live in the home for more than one year. She reviewed provisions and restrictions for selling the home to another income-eligible household.

Chair Kluber asked whether the Inclusionary Ordinance was mandated by the state. Ms. Nebb said the density bonus requirements are long overdue, and although affordable housing provisions are not strict mandates, it can affect certification of the City's Housing Element. She also noted that enacting the ordinance during a downturn of the market will not affect the market either way. Commissioner Avila noted that such ordinances are fairly common now, and the loans for these property types have standard terms.

Commissioner Burt acknowledged the controversial nature of this issue and changing stresses on middle class families today. She felt that anything that can be done to promote home ownership should be supported. She complimented the members of the Housing Task Force and staff for working so hard on the ordinance. She was strongly supportive.

Commissioner Avila was also appreciative of staff's work, as well as the commitment by the Housing Task Force members to develop an ordinance custom-crafted to meet Martinez' needs.

Chair Kluber agreed, especially commenting on Mr. Lopez' commitment to the process. Mr. Lopez noted that Ms. Nebb wrote most of the language in the ordinance.

2. *General Plan Update - Study session to discuss the General Plan update process- includes powerpoint presentation by Staff. No formal action is taken in the Study Session. Applicant: City of Martinez (AL)*

Commissioner Burt expressed concern about moving forward quickly with the General Plan update, but she acknowledged the need to postpone tonight's discussion.

The Commission agreed by consensus to postpone discussion of the General Plan update to the February 26th meeting.

#### COMMUNICATIONS

None.

#### COMMISSION ITEMS

There was brief discussion of upcoming potential agenda items.

Chair Kluber expressed appreciation for the thank-you email regarding the RV ordinance.

**STAFF ITEMS**

None.

**ADJOURNMENT**

Chair Kluber adjourned the meeting at 8:45 p.m. to the next regularly scheduled meeting, February 26, 2008 at 7:00 p.m.

Respectfully submitted,

Approved by the Planning Commission

Chairperson

Transcribed by, Mary Hougey

Frank J. Kluber

DRAFT