ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

STAFF REPORT

TO Members of the Ordinance Review Advisory Committee
RE Agricultural Employee Housing
MEETING DATE January 10, 2012

GENERAL INFORMATION

The following is an overview of policies pertaining to agricultural employee housing and amendments to the Alameda County Zoning Ordinance regarding such housing necessary to comply with State law.

STAFF RECOMMENDATION

Staff requests that the Committee hear the staff presentation on the topic and provide feedback on the proposed Zoning Ordinance amendments

STAFF ANALYSIS

Background and Rationale for Proposed Amendments

The County must ensure that its Zoning Ordinance complies with Health and Safety Code Sections 17021.5 and 17021.6 which require the following:

> *Any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use designation. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.*

Currently, the County's Zoning Ordinance only addresses agricultural caretaker dwelling units and not agricultural employee housing. An agricultural caretaker dwelling unit differs from agricultural employee housing in so far as the occupant of the caretaker dwelling must perform work on the parcel upon which the dwelling unit is located; agricultural employee housing has no such limitation on occupancy. In order to comply with sections 17021.5 and 17021.6 of the Health and Safety Code, the County should amend its Zoning Ordinance. Specifically the Zoning Ordinance should include definitions of the terms "agricultural employee" and "agricultural employee housing" and it should add agricultural employee housing to the list of

permitted uses in the Agricultural (A) District. Consistent with other provisions of that chapter, agricultural employee housing should be subject to a Site Development Review.

It is worth noting that these units must still comply with the County's General Plan and are subject to review under the California Environmental Quality Act (CEQA).

Draft Ordinance Amendments

Proposed Definitions to be added to Chapter 17.04

"Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

"Agricultural employee housing" means any living quarters or accommodations of any type, including mobilehomes, which comply with the building standards in the State Building Standards Code or an adopted local ordinance with equivalent minimum standards for building(s) used for human habitation, and buildings accessory thereto, where accommodations are provided by any person for individuals employed in farming or other agricultural activities, including such individuals' families. The agricultural employee housing is not required to be located on the same property where the agricultural employee is employed.

Proposed Revisions to A District Regulations

*****Highlighted and underlined text is new*****

Chapter 17.06 - A DISTRICTS

17.06.010 - Agricultural districts—Intent.

Agricultural districts, hereinafter designated as A districts, are established to promote implementation of general plan land use proposals for agricultural and other nonurban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare.
(Prior gen. code § 8-25.0)

17.06.020 - Map designation.

[The Board repealed this section.]

17.06.030 - Permitted uses.

The following principal uses are permitted in an A district:
A. On a building site, one one-family dwelling or one-family mobilehome either constructed after September 15, 1971, and issued an insignia of approval by the California Department of Housing and Community Development and permanently located on a permanent foundation system, or constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system;
B. Crop, vine or tree farm, truck garden, plant nursery, greenhouse, apiary, aviary, hatchery, horticulture;
C. Raising or keeping of poultry, fowl, rabbits, sheep or goats or similar animals;
D. Grazing, breeding or training of horses or cattle;
E. Winery or olive oil mill;
F. Fish hatcheries and rearing ponds;
G. Public or private riding or hiking trails;
H. One secondary dwelling unit per building site on parcels twenty-five (25) acres in size or larger that are zoned for not more than one dwelling and have one but no more than one dwelling unit on the parcel subject to the following requirements:
1. The secondary dwelling unit shall be on the same building envelope as the primary unit;
2. On parcels less than one hundred (100) acres, the secondary dwelling unit shall be no larger than two thousand (2,000) square feet in area; on parcels one hundred (100) acres or larger the secondary dwelling unit shall be no larger than two thousand five hundred (2,500) square feet in area;
3. The secondary dwelling unit shall be subject to site development review pursuant to Section 17.54.210 et seq.; and
4. The secondary dwelling unit shall be subject to and consistent with the provisions of the county policy on secondary dwelling units in agricultural and rural residential areas. Notwithstanding the requirements of Section 17.54.220.A, for secondary units on parcels that are less than one hundred (100) acres in size, the planning commission shall decide applications for site development review under this section, and a public hearing is required.
I. Occupancy of agricultural caretaker dwelling(s) subject to a site development review as provided in Section 17.06.090, when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her family.
J. Boarding stables and riding academies subject to the following requirements:
1. The boarding stable shall be subject to site development review pursuant to Sections 17.06.090 and 17.54.210 et seq., except as follows:
a. The appropriate board of zoning adjustments shall decide applications for site development review under this section, and a public hearing is required.
b. Where the holder of an existing conditional use permit is found to be in compliance with all conditions of the existing conditional use permit, the planning director shall recommend approval of a site development review for the facility Alameda County Ordinance Code, Title 17, Zoning Ordinance with no new conditions except as allowed by the county policy for equine facilities in the A (agricultural) district, to the appropriate board of zoning adjustments.
c. The planning director may modify the requirements of Section 17.54.230 consistent with the provisions of the county policy of equine facilities in the A (agricultural) district; and specifically may waive the requirement that the site plan be prepared by licensed civil engineer, land surveyor, architect, landscape architect, or a registered building designer.
2. The boarding stable shall be subject to and consistent with the provisions of the county policy for equine facilities in the A (agricultural) district.
3. Site development reviews under this section shall not have an expiration date. However, they shall be subject to a periodic review for compliance with conditions of approval of the site development review and with relevant county ordinances, including all water quality rules and regulations. Such reviews shall occur every five years at minimum, or as needed to ensure compliance.
4. Any changes in the scope of the boarding stable operation shall require a modification to the site development review.
5. Site development review approval under this section shall not be construed to confer upon a boarding stable any exemption from any health, nuisance, or public safety ordinances or their subsequent enforcement or confer any other unique privileges upon a stable.
(Ord. 2004-55 § 1; Ord. 2003-47 § 1; Ord. 99-2 § 1; Ord. 93-33 § 2 (part); prior gen. code § 8-25.2)

K. Agricultural employee housing consisting of not more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a single family or household subject to a site development review as described provided in Section 17.06.090 (Agricultural Districts--Site Development Review—When Required), 17.60.100 (Agricultural Districts—Agricultural Employee Housing), and 17.54.210 (Site Development Review).

17.06.035 - Conditional uses—Planning commission.

The following are conditional uses and shall be permitted in an A district only if approved by the planning commission, sitting as a board of zoning adjustments, as provided in Sections 17.54.135 and 17.06.010.
A. Sanitary landfill not to include processing salvaged material;
B. Flight strip;
C. Cemetery;
D. Composting facility.
(Ord. 2000-53 § 1 (part); Ord. 99-26 § 1 (part))

17.06.040 - Conditional uses—Board of zoning adjustments.

In addition to the uses listed in Sections 17.52.480 and 17.52.580, the following are conditional uses and shall be permitted in an A district only if approved by the board of zoning adjustments, as provided in Sections 17.54.130 and 17.06.010:
A. [Deleted]
B. Outdoor recreation facility;
C. Animal hospital, kennel.
D. Killing and dressing of livestock, except when accessory as specified in Section 17.06.050;
E. Public or private hunting of wildlife or fishing, and public or private hunting clubs and accessory structures;
F. Packing house for fruit or vegetables, but not including a cannery, or a plant for food processing or freezing;
G. Flight strip when accessory or incidental to a permitted or conditional use;
H. Hog ranch;
I. Drilling for and removal of oil, gas or other hydrocarbon substances;
J. Radio and television transmission facilities;
K. Public utility building or uses, excluding such uses as a business office, storage garage, repair shop or corporation yard;
L. Administrative offices accessory to the principal use on the premises including activities by the same occupancy which are not related to the principal use providing such activities not so related are accessory to the administrative office activity;
M. [Deleted]
N. Administrative support and service facilities of a public regional recreation district;
O. Privately owned wind-electric generators;
P. Remote testing facility;
Q. Winery or olive oil mill related uses.
R. Agricultural employee housing for 37 or more beds in group quarters or 13 units or spaces designed for use by a single family or household.
NOTE: Deletion of A & M regarding ag employee housing.
(Ord. 2004-55 § 2; Ord. 2002-60 § 1 (part); Ord. 2000-53 § 1 (part); Ord. 99-26 § 1 (part); Ord. 94-40 § 1; Ord. 3-33 § 2 (part); prior gen. code § 8-25.3; Subsections deleted O-2009-??, May 12, 2009)

17.06.050 - Accessory uses.

When located in an A district, and subordinate to a lawful use, the following accessory uses, in addition to those normally accessory to a dwelling are permitted:
A. Farm buildings, including stable, barn, pen, corral, or coop;
B. Building or room for packing or handling products raised on the premises;
C. Killing and dressing of poultry, rabbits and other small livestock raised on the premises, but not including an abattoir for sheep, cattle or hogs;
D. Stand for the sale at retail of items produced or raised on the premises having a ground coverage not in excess of four hundred (400) square feet;

E. Accessory business signs not exceeding an aggregate area of twenty (20) square feet; having no moving parts or illumination;
F. Administrative office, maintenance building, when accessory to a principal use permitted by Section 17.06.040O.
(Prior gen. code § 8-25.4) 17.06.060 - Building site.
Every use in an A district shall be on a building site having an area not less than one hundred (100) acres.
(Prior gen. code § 8-25.5)

17.06.070 - Yards.
The yard requirements in an A district are as follows, subject to the general provisions of Section 17.52.330:
A. Depth of front yard: not less than thirty (30) feet;
B. Depth of rear yards: not less than ten feet;
C. Width of side yards: not less than ten feet.
(Prior gen. code § 8-25.6)

17.06.080 - Signs.
No sign in an A district shall be illuminated. No more than two sale or lease signs shall be placed on any lot, and no such sign shall have an area in excess of twenty-four (24) square feet, except in conformance with Sections

17.52.460 and 17.52.470 (Subdivision).
In other respects, Section 17.52.020 shall control.
(Prior gen. code § 8-25.7)

17.06.090 - Site development review—When required.
Site development review pursuant to Section 17.54.210 shall be required for:
A. Every new dwelling or addition to existing dwelling exceeding five hundred (500) square feet or thirty (30) feet in height hereafter placed on a parcel in the A district;
(Prior gen. code § 8-25.8)
B. Agricultural caretakers dwelling(s), when found by the planning director to be necessary to provide housing for the agricultural caretaker and his/her/their family(ies); subject to the following provisions:
1. Initial site development review shall include submittal of required applications and materials and completion of an agricultural caretaker dwelling report, signed by the property owner.
2. The agricultural caretaker dwelling report submitted under Paragraph 1 above shall include a description of the agricultural use on the site, a description of the commercial/economic viability of the agricultural use, a discussion of the personnel necessary to implement or oversee the agricultural use, and a description of the proposed agricultural dwelling and/or housing. If the agricultural use is intended primarily for private interest rather than commercial viability, or if the dwelling unit is intended for a use not otherwise related directly to commercially viable agriculture on the site, such as onsite security, the report shall provide this information.
3. Site development review approval shall normally be issued for a period of five years, except in instances where it is found by the planning director that a demonstrable need for more stringent controls (e.g., history of non-compliance with county codes, public health/safety issues, community concerns) is necessary.
4. The planning director may extend initial site development review for additional five-year periods of time at the end of each preceding five-year period, subject to review and approval, of an updated agricultural caretaker dwelling report, signed by the property owner.
5. During the effective period of the site development review, any changes relating to the information contained in the agricultural caretaker dwelling report (including changes to the dwelling unit itself, changes in maximum occupancy requirements, and/or changes in the size/nature/ scope of the agricultural use being served by the presence of the caretaker onsite) shall be reported to the planning department, and shall be subject to the same procedures and regulations as those applicable to the initial application.

6. The planning director shall have the discretion to disapprove the initial and/or subsequent site development review and agricultural caretaker dwelling report if found that compliance with the requirements and intent set forth in this title is exercised unlawfully or contrary to any condition or limitation of its issuance.
7. The planning director may, at his/her discretion, hold a public hearing regarding an initial or subsequent site development review application.
8. The approval of a site development review for an agricultural caretaker dwelling of any kind on any parcel, regardless of the existing legal building site status of the parcel, shall not be construed to establish upon that same, or any adjacent or commonly-owned parcel, building site status.
9. The agricultural caretaker dwelling is intended to remain only as long as necessary to support either onsite security or the primary agriculture use on the site, and when the need for this support terminates the dwelling must be completely removed or converted to another legal use.
10. Violations of this section shall be subject to enforcement, penalties and abatement under Chapters 17.58 and 17.59 of this title.
C. Boarding stables and riding academies subject to the provisions of Section 17.06.030J of this chapter.
D. Agricultural employee housing subject to the provisions of 17.06.100 of this chapter.

NOTE: Renumbering of §§3-7 (formerly §§2-6 plus amendments O-2009-##, May 12, 2009).
(Ord. 2004-55 § 3; Ord. O-2003-47 § 1)

17.06.100 – Agricultural Districts—Agricultural employee housing
Agricultural employee housing is subject to site development review pursuant to Sections 17.06.060 (Agricultural Districts--Site Development Review—When Required) and 17.54.210 (Site Development Review) et seq. and to the following provisions:
1. The site development review shall include an agricultural employee housing report, signed by the property owner.
2. The agricultural employee housing report submitted under Paragraph 2 above shall include the following information:
a. Entity responsible for housing maintenance and up-keep;
b. Description of whether the housing will be used on a permanent, temporary, and/or seasonal basis;
c. Total number of people to be housed on-site at any one time;
d. Description of the housing, including whether the structures will be permanent and/or temporary, intended as units for families, one person, or several persons, and cost of the units and utilities to the agricultural employees;
e. Location of where the agricultural employees will work;
f. There must be adequate water and sewer available to service the development, as determined by the Department of Environmental Health;
g. The housing must be located off prime and productive agricultural land, or on the parcel where no other alternatives exist on site, on the least viable portion of the parcel; and
h. The development shall incorporate proper erosion and drainage controls.
i. Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings)

Proposed Revisions to Parking Regulations

Table 17.52.910 Parking Spaces Required for Residential Buildings	
Use	Number of Spaces Required
Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation	2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest

Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities	2 plus 1 for each bedroom available for ~~sorority;~~ accommodating ~~guests~~ a paying guest
Medical or residential care facility, and transitional and supportive housing developments	2 plus 1 for each 6 beds for persons not related to the resident family or manager
Hospital	2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1 per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings
Mobilehome park	2 for each mobilehome site located on each mobilehome site; other provisions of this title notwithstanding, the access to one of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites
Recreational vehicle park	1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites
Emergency shelter	3 plus 1 per each 10 individual beds.
Agricultural employee housing	1 space per unit, or 1 for each 4 beds

CONCLUSION

Based upon a review of relevant sections of the Health and Safety Code, staff recommends agricultural employee housing be permitted in the A (Agricultural) District. Agricultural employee housing should also be subject to a site development review (consistent with other uses in the A District) and specific performance standards. At this time, staff requests that the Committee provide comments of the proposed regulations and development standards prepared by staff, especially the draft performance standards (17.060.100).

RELEVANT STATUTES

Excerpted from the Health and Safety Code:

17021.5. (a) Any employee housing which has qualified, or is intended to qualify, for a permit to operate pursuant to this part may invoke the provisions of this section.

(b) Any employee housing providing accommodations for six or fewer employees shall be deemed a single-family structure with a residential land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be included within the definition of a boarding house, rooming house, hotel, dormitory, or other similar term that implies that the employee housing is a business run for profit or differs in any other way from a family dwelling. No conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that serves six or fewer employees that is not required of a family dwelling of the same type in the same zone. Use of a family dwelling for purposes of employee housing serving six or fewer persons shall not constitute a change of occupancy for purposes of

Part 1.5 (commencing with Section 17910) or local building codes.

(c) Except as otherwise provided in this part, employee housing that serves six or fewer employees shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this subdivision shall be construed to forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee to the owner, operator or any resident for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to employee housing which serves six or fewer persons.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing which serves six or fewer employees shall be considered a residential use of property and a use of property by a single household, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local needs. This section shall apply equally to any charter city, general law city, county, city and county, district and any other local public entity.

17021.6. (a) The owner of any employee housing who has qualified or intends to qualify for a permit to operate pursuant to this part may invoke this section.

(b) Any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use designation for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

(c) Except as otherwise provided in this part, employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other agricultural activities in the same zone are not likewise subject. This subdivision does not forbid the imposition of local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall

charge any fee to the owner, operator, or any resident for enforcing fire inspection regulation pursuant to state law or regulations or local ordinance, with respect to employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household.

(d) For the purposes of any contract, deed, or covenant for the transfer of real property, employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be considered an agricultural use of property, notwithstanding any disclaimers to the contrary. For purposes of this section, "employee housing" includes employee housing defined in subdivision (b) of Section 17008, even if the housing accommodations or property are not located in a rural area, as defined by Section 50101.

(e) The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local need. This section shall apply equally to any charter city, general law city, county, city and county, district, and any other local public entity.

(f) If any owner who invokes the provisions of this section fails to maintain a permit to operate pursuant to this part throughout the first 10 consecutive years following the issuance of the original certificate of occupancy, both of the following shall occur:

(1) The enforcement agency shall notify the appropriate local government entity.

(2) The public agency that has waived any taxes, fees, assessments, or charges for employee housing pursuant to this section may recover the amount of those taxes, fees, assessments, or charges from the landowner, less 10 percent of that amount for each year that a valid permit has been maintained.

(g) Subdivision (f) shall not apply to an owner of any prospective, planned, or unfinished employee housing facility who has applied to the appropriate state and local public entities for a permit to construct or operate pursuant to this part prior to January 1, 1996.

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ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

STAFF REPORT

TO Members of the Ordinance Review Advisory Committee
RE Density Bonus
MEETING DATE January 10, 2012

GENERAL INFORMATION

The following is an overview of policies pertaining to density bonuses and amendments to the Alameda County Zoning Ordinance necessary to comply with State law.

STAFF RECOMMENDATION

Staff requests that the Committee hear the staff presentation on the topic and provide feedback on the proposed Zoning Ordinance amendments

STAFF ANALYSIS

Background and Rationale for Proposed Amendments

A density bonus is the allocation of development rights that allows a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned. On January 1, 2005 SB 1818 revised California's density bonus statutes (Government Code Sections 65915-65918) by reducing the number of affordable units that a developer must provide in order to receive a density bonus. The bill also increased the maximum density bonus to 35 percent. The new minimum affordability requirements are as follows:

- The project is eligible for a 20 percent density bonus if at least 5 percent of the units are affordable to very low-income households, or 10 percent of the units are affordable to low-income households; and
- The project is eligible to receive a 5 percent density bonus if 10 percent of for-purchase units are affordable to moderate-income households.

The law also established a sliding scale, which determines the additional density that a project can receive. A developer can receive the maximum density bonus of 35 percent when the project provides either 10 percent very low-income units, 20 percent low-income units, or 40 percent moderate-income units. In 2005, SB 435 was passed, which clarified California's density bonus law by explaining that a project can only receive one density bonus.

Prior to SB 1818 and SB 435, jurisdictions were required to grant one incentive, such as financial assistance or development standard reductions, to developers of affordable housing. The new laws require that cities and counties grant more incentives depending on the percentage of

affordable units developed. Incentives include reductions in zoning standards, development standards, design requirements, or other concessions that would reduce costs for developers. Projects that satisfy the minimum affordable criteria for a density bonus are entitled to one incentive from the local government. Depending on the amount of affordable housing provided, the number of incentives can increase to a maximum of three incentives from the local government. If a project utilizes less than 50 percent of the permitted density bonus, the local government must provide an additional incentive.

Additionally, the new laws provide density bonuses to projects that donate land for residential use. The donated land must satisfy all of the following requirements:

- The land must have general plan and zoning designations that allow the construction of very low-income affordable units as a minimum of 10 percent of the units in the residential development;
- The land must be a minimum of one acre in size or large enough to allow development of at least 40 units; and
- The land must be served by public facilities and infrastructure.

Furthermore, there are additional provisions in the statute that would permit the granting of a density bonus for projects that include child care facilities. A request for an additional density bonus can be for child care facilities that meet the following standards:

- 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.
- The number of children who attend the center shall be equal to or greater than the percentage of dwelling units that are required for very low income, lower income, or moderate income households.

Chapter 17.56 of the Alameda County Zoning Ordinance, Density Bonus, permits a density bonus of at least 25 percent and at least one other concession or incentive or other incentives of equivalent financial value to developers of housing developments that reserve at least 10 percent for very-low income households, 20 percent of their units for lower-income households, or 50 percent for qualifying senior citizens. All units developed with the density bonus must be affordable for a minimum of thirty years. Table 1 below describes the differences between Alameda County's existing requirements and State law.

TABLE 1: SB 1818 DENSITY BONUS REQUIREMENTS

State Law			**Alameda County**	
Percent Units by Income Group	**Density Bonus**		**Percent Units by Income Group**	**Density Bonus Maximum**
	Minimum	**Maximum**		
10% Very Low	-	35%	10% Very Low	25%
20% Low	-	35%	20% Low	25%
40% Moderate	-	35%	50% Seniors	25%
100% Senior	20%	20%		

5% Very Low	20%	-		
10% Low	20%	-		
10% Moderate	5%	-		

The County's Density Bonus provides more stringent requirements than the minimum requirements established under SB 1818 for the percentage of very low-, low- and moderate-income units. However, the County Zoning Ordinance does not state that the 25 percent density bonus is a maximum. It defines the term density bonus as "*an increase of at least twenty-five (25) percent in the number of dwelling units authorized for a particular parcel of land beyond the otherwise maximum allowable residential authorized by the county zoning ordinance, Title 17 of this code*;" however, the County still must increase the density bonus to 35 percent to be consistent with SB 1818 (Chapter 928, Statutes of 2004), and include the additional regulations, pertaining to child care facilities, and land donations contained therein.

SB 1818 also imposes statewide parking standards that a jurisdiction must grant upon request from a developer of an affordable housing project that qualifies for a density bonus. When local parking requirements are higher, the statewide parking standards supersede the local requirements. The developer may request these parking standards even if they do not request the density bonus. The new parking standards are summarized in Table 2. These numbers are the total number of parking spaces including guest parking and handicapped parking.

TABLE 2: STATEWIDE PARKING STANDARDS FOR AFFORDABLE HOUSING

Number of Bedrooms	**Number of On-Site Parking Spaces**
0 to 1 bedroom	1
2 to 3 bedrooms	2
4 or more bedrooms	2 ½
Source: Government Code Section 65915 (p)	

Draft Ordinance Amendments

In preparing the following amendments to the Alameda County Planning Code, staff conducted a review of existing and planned policies for each of the cities located in Alameda County and analyzed the work of several other jurisdictions including the cities of Cathedral City, Agoura Hills, Ventura and Monterey Counties, as well as the County's current Ordinance. Where a jurisdiction had adopted an Ordinance amendment post the approval of SB 1818, there was very little difference in the content of the Ordinance texts as the state law is highly prescriptive. The major differences observed between the various Ordinances were in their overall arrangement and formatting.

Chapter 17.~~56~~ 106- DENSITY BONUS
17.~~56~~ 106.010 – Title.
17.~~56~~ 106.020 – Purpose.
17.~~56~~ 106.030 – Definitions.
17.~~56~~ 106.040 – Density bonus qualifications.

17.~~56~~ 106.050 – Density Bonus--Density bonus calculations.
17.~~56~~ 106.060 – Density Bonus--Eligibility and application requirements for incentives.
17.~~56~~ 106.070 – Qualifications for restricted units.
17.~~56~~ 106.080 – Term of affordability.
17.~~56~~ 106.090 – Requirements for rental housing developments.
17.~~56~~ 106.100 – Requirements for owner-occupied housing.
17.~~56~~ 106.110 – Application procedure.
17.~~56~~ 106.120 – Density Bonus--Child Care Facilities.
17.~~56~~ 106.130 – Density Bonus--Donation of land.
17.~~56~~ 106.140 – Administration and fees.

17.~~56~~ 106- Title.

This chapter shall be called the density bonus ordinance of the county of Alameda.
(Ord. 93-5 § 1 (part): prior gen. code § 8-400)

17.~~56~~ 106.020 - Purpose.

This chapter establishes policies which facilitate the development of affordable housing for very low and lower income households and senior households within the unincorporated area of Alameda County, through the provision of a density bonus, and additional financial incentives if necessary for affordability, to applicants who agree to meet the requirements established by this chapter.
(Ord. 93-5 § 1 (part): prior gen. code § 8-401)

17.~~56~~ 106.030 - Definitions.

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

Affordable Housing Agreement: "Affordable housing agreement" means the agreement made between the applicant and the county governing the regulation and monitoring of the affordable units.

Amenities: "Amenities" means interior amenities including, but not limited to, fireplaces, garbage disposals, dishwashers, cabinets and storage space and bathrooms in excess of one.

Applicant: "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks a density bonus or incentives or both under this chapter.

Base Units: "Base Units" means the number of units that would be allowed under the General Plan land use designation and zoning ordinance for the subject site before calculation of the Density Bonus.

Child Care Facility: "Child Care Facility" means a facility, other than a day care home, licensed by the State of California to provide non-medical care to children under 18 years of age in need of personal services, supervision or assistance on less than a 24-hour basis. "Density Bonus" means an increase in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation taking into account all applicable limitations.

Density Bonus: "Density bonus" means an increase ~~of at least twenty-five (25) percent in the number of dwelling units authorized for a particular parcel of land beyond the otherwise maximum allowable residential authorized by the county zoning ordinance, Title 17 of this code.~~
in density over the otherwise maximum allowable residential density under the applicable zoning ordinance and General Plan land use designation.

Density Bonus Unit: "Density bonus unit" means a residential dwelling unit authorized as a result of the granting of a density bonus.

~~"First time home buyer" means a person who has not held an ownership interest in a principal residence in the three years prior to the purchase of a restricted unit.~~

Household: "Household" means one person living alone or two or more persons sharing a residential dwelling.

Housing Development: "Housing Development" means a project providing residential units including, without limitation, a subdivision, a planned unit development, multifamily dwellings, or condominium project. Housing developments consist of development of residential units or creation of unimproved residential lots and also include either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units.

Incentive: An "Incentive" ~~An incentive~~ may include any of the following:

1. Approval of a mixed-use development if commercial, office, industrial, or other land uses will help to offset the costs of the housing development. A mixed-use development will be approved only if the commercial, office, industrial, or other land uses are compatible with the surrounding land uses, the county general plan, and applicable specific plans;
2. Government-assisted financing, including, but not limited to, mortgage revenue bonds issued by the county;
3. A reduction in site development standards, but only if the overall quality of the development is not lessened. All developments must also meet any design guidelines codified by the county at a future date;
4. Other incentives proposed by the developer or the county which result in identifiable cost reductions, including but not limited to:
   a. Waiver or reduction of certain county fees applicable to restricted units in a housing development,
   b. Reduction of interior amenities,
   c. Priority processing of a housing development which provides restricted units. Upon certification that the application is complete and eligible for priority processing, the housing development will be reviewed by the planning director in advance of all nonpriority items. The housing development review will be completed and a recommendation will be made by the planning director whether to approve the housing development within one hundred twenty (120) days of receipt of the completed application. The planning director may give written approval to extend the one hundred twenty (120) day period.

Lower Income Household: "Lower income household" means a household whose gross income is eighty (80) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5; if the Health and Safety Code definition is amended, this definition shall be deemed to be amended to the same effect.

Maximum Allowable Residential Density: "Maximum allowable residential density" means the density allowed under the General Plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project. Maximum allowable residential density takes into account limitations to density pursuant to General Plan policies and Zoning Ordinance regulations.

Median Income: "Median income" means the median income for Alameda County, published by the United States Department of Housing and Urban Development.

Moderate Income Household: "Moderate Income Household" means a household, with an annual income which does not exceed the United States Department of Housing and Urban Development annual determination for moderate income households with incomes of one hundred twenty (120) percent of the Median Income, adjusted for household size.
~~"Planning director" means the Alameda County planning director or his or her designee.~~
Already defined in Chapter 17.04.

Qualifying Unit: "Qualifying Unit" means a dwelling or dwellings designated for occupancy by very low, low, or moderate income households, within a housing development, which make the housing development eligible for a Density Bonus.

Resale controls: "Resale controls" means a resale restriction placed on restricted units by which the price of such units and/or the age or income of the purchaser will be restricted to ensure affordability and occupancy by very low or lower income households or senior households.

Restricted Unit: "Restricted unit" means a residential dwelling unit to be sold or rented at a price or rent affordable to a very low or lower income household, or sold or rented to a senior household.

Senior Citizen Housing Development: "Senior Citizen Housing Development" means a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in ~~Sections 51.3 and 51.12 of the~~ California Civil Code Sections 51.3 and 51.12.

Senior Household: "Senior household" means as established by California Civil Code Section 51.3, a household in which at least one member is at least sixty-two (62) years of age~~, or a household with at least one member who is at least fifty-five (55) years of age in the case of a housing development with more than one hundred fifty (150) units~~.

Term of Affordability: "Term of affordability" means the time during which restricted units in a housing development must remain as restricted units.

Unit Type: "Unit type" means a dwelling unit with a defined floor area and a designated number of bedrooms.

Very Low Income Household: "Very low income household" means a household whose gross income is fifty (50) percent or less of the Alameda County median income adjusted for household size, computed pursuant to California Health and Safety Code Section 50079.5.
(Ord. 93-5 § 1 (part): prior gen. code §§ 8-402—8-402.17)

17.~~56~~ 106.040 - Density bonus qualifications.

In order to qualify for a density bonus and one or more incentives under this chapter, a housing development must consist of five or more dwelling units and meet one or more of the following criteria:

~~**A.** Ten percent of the total units are designated as restricted units for very low income households; or~~

~~**B.** Twenty (20) percent of the total units are designated as restricted units for lower income households; or~~

~~**C.** Fifty (50) percent of the total units are designated as restricted units for senior households.~~
(Ord. 93-5 § 1 (part): prior gen. code § 8-403)

A. Agrees to construct and maintain at least five (5) percent of the base units for very low income households;

B. Agrees to construct and maintain at least ten (10) percent of the base units for lower income households;

C. Agrees to construct and maintain at least ten (10) percent of the base units in a condominium project or planned development project dedicated to moderate income households, provided that all units in the development are offered to the public for purchase;

D. Agrees to construct and maintain a senior citizen housing development;

E. Converts an existing apartment or multifamily dwelling to a condominium development as described in Section 17.106.050.I (Density Bonus—Density Bonus Calculations).

17.106.050 - Density bonus calculations.

A. In accordance with state law, he granting of a Density Bonus or the granting of a density bonus or an incentive(s) shall not be interpreted, in and of itself, to require a General Plan amendment, specific plan amendment, rezone, or other discretionary approval.

B. An applicant must choose a Density Bonus from only one applicable affordability category of this Chapter and may not combine categories, with the exception of a Child Care Facility or land donation. The Child Care Facility or land donation may be combined with an affordable housing development for an additional Density Bonus up to a combined maximum of thirty five (35) percent.

C. Any Density Bonus and/or Concession/Incentive awarded shall apply only to the Housing Development for which it was granted.

D. In determining the number of density bonus units to be granted pursuant to ~~17.56.040~~ Section 17.106.040 (Density Bonus Qualifications), the maximum residential density for the site shall be multiplied by 0.20 for subsections A, B, and D of that section and 0.05 for subsection C of that section, unless a lesser number is selected by the developer.

1. For each one percent increase above ten 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.

2. 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.

3. For each one percent increase above ten percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent up to a maximum of 35 percent.

E. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

F. The density bonus units shall not be included when determining the number of qualifying units required for a density bonus. When calculating the required number of qualifying units, any calculations resulting in fractional units shall be rounded to the next larger integer.

G. The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required qualifying units pursuant to Section 17.106.040 (Density bonus qualifications) above. Regardless of the number of qualifying units, no housing development may be entitled to a density bonus of more than thirty-five percent.

H. The following table summarizes this information:

Density Bonus Summary Table

Income Group	Minimum % Qualifying Units	Bonus Granted	Additional Bonus for Each 1% Increase in Qualifying Units	% Qualifying Units Required for Maximum 35% Bonus

Very Low Income	5%	20%	2.5%	11%
Low Income	10%	20%	1.5%	20%
Moderate Income (Condo or PD only)	10%	5%	1%	40%
Senior Citizen Housing Development	100%	20%	—	—

I. An applicant for an apartment conversion to a condominium project that provides at least thirty-three (33) percent of the total units of the proposed condominium project to persons and families of Low or Moderate Income, or fifteen (15) percent of the total units of the project to Lower Income households, and agrees to pay for the reasonable necessary administrative costs incurred by the County, qualify for a twenty-five (25) percent Density Bonus or other incentives of equivalent financial value. An applicant shall be ineligible for a Density Bonus or other incentives if the apartments proposed for conversion constitute a housing development for which a Density Bonus or other Incentives were previously granted under the provisions of this chapter.

17.106.060 – Density Bonus--Eligibility and application requirements for incentives.

A. A housing development qualifying for a density bonus is entitled to at least one incentive in addition to the density bonus. incentives are available for qualifying housing developments as follows:

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

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

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

B. The appropriate authority for the housing development shall grant the incentive unless the appropriate authority makes a written finding, based upon substantial evidence, of any of the following:

1. That the incentive is not necessary in order to provide for affordable housing costs; or

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

C. In accordance with Government Code Section 65915 (p), an applicant qualifying for a density bonus may request, inclusive of handicapped and guest parking, the following parking ratios:

1. Zero to one bedrooms: One onsite parking space

2. Two to three bedrooms: Two onsite parking spaces

3. Four or more bedrooms: Two and one-half parking spaces

These standards may be applied in addition to any other incentives for which the housing development qualifies as specified in this section. If the total number of parking spaces for the development is other than a whole number, the number shall be rounded up to the next whole number. Off-street parking spaces provided pursuant to this paragraph may be arranged in tandem and may be uncovered.

17.~~56~~ 106.~~050~~ 070 - Qualifications for restricted units.

A. The applicant shall execute an affordable housing agreement with Alameda County, which shall be recorded and shall run with the land.

B. The affordable housing agreement shall describe household types, number, location, size and construction scheduling of restricted units and any other information required by the county to determine the applicant's compliance with the conditions.

C. Restricted units shall be constructed concurrently with or prior to the construction of nonrestricted units, shall be dispersed throughout the housing development, and shall include all unit types represented in the housing development and shall be in the same proportions as nonrestricted unit types.

(Ord. 93-5 § 1 (part): prior gen. code §§ 8-404—8-404.3)

17.~~56~~ 106.~~060~~ 080 - Term of affordability.

~~**A.** If a housing development receives only a density bonus, the restricted units will remain restricted to lower or very low income households or to senior households for a minimum of ten years from the date of issuance of the certificate of occupancy.~~

~~**B.** If a housing development receives both a density bonus and an incentive, restricted units must remain restricted to lower or very low income households or to senior households for a minimum of thirty (30) years from the date of the certificate of occupancy.~~

(Ord. 93-5 § 1 (part): prior gen. code §§ 8-405—8-405.2)

The applicant shall agree to, and the County shall ensure, the continued availability of the Qualifying Units and other Incentives for a period of at least 30 (thirty) years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

17.~~56~~ 106.~~080~~ 090 - Requirements for rental housing developments.

A. All restricted units shall be occupied by the household type specified in the affordable housing agreement.

B. The applicant shall be responsible for obtaining and verifying information with respect to the qualifications of prospective and current tenants, including, but not limited to, information relating to tenants' incomes, and eligibility, in a form satisfactory to the planning director. The applicant shall maintain a list of qualified applicants for the duration of the program and shall allow the planning director to inspect such information upon reasonable notice. The applicant may contract with another entity to perform these functions subject to the approval of the planning director.

C. The applicant shall submit reports annually certifying that the restricted units are occupied by the household types specified in the affordable housing agreement. The annual reports shall include the number of persons and income for each household in the restricted units.

D. If the affordable housing agreement is violated, the applicant shall pay to the county as liquidated damages the maximum sum of five thousand dollars ($5,000.00) for each restricted unit that is in violation of the affordable housing agreement. This amount may be required for each month of violation. Any unpaid liquidated damages may be recorded as a notice of violation of the affordable housing agreement against the title of the property. In addition to the liquidated damages, if a very low income or lower income household in a restricted unit is charged a rent that exceeds the rent specified in the affordable housing agreement, the applicant must pay to the tenant the difference in the rent charged and the allowable rent for the months that the tenant was overcharged. If a restricted unit is rented to a household with an income exceeding that specified in the affordable housing agreement, in lieu of the liquidated damages mentioned above, the first vacant nonrestricted unit must be made a restricted unit and rented to a household that qualifies under the affordable housing agreement.

(Ord. 93-5 § 1 (part): prior gen. code §§ 8-406—8-406.4)

17.~~56~~ 106.~~080~~ 100 - Requirements for owner-occupied housing.

A. The ~~first time~~ home buyer shall verify on a form provided by the planning director that the restricted unit being purchased is for use as the buyer's principal residence and that the buyer is either a lower income household, very low income household or a senior household. If the restricted unit ceases to function as the owner's principal residence, it shall be sold according to the requirements of the resale controls. If evidence is presented to the planning director that the owner is unable to continuously occupy the restricted unit because of illness or incapacity, the planning director may approve rental of the restricted unit to a very low income household, lower income household, or senior household.

B. The resale controls will place limits on the resale price of a restricted unit and on the income of the new buyer. The resale price of a restricted unit will be limited to the original price of the restricted unit, plus a factor of appreciation equal to the annual increase in the median income, plus the appraised value, at time of sale, of any documented capital improvements. In addition, when an owner sells a restricted unit, the sale must be to a very low income household, lower income household, or senior household.

C. Resale controls shall be recorded as part of the declaration of covenants, conditions, and restrictions on the restricted unit. The resale controls will remain in effect for the term of affordability.

D. The following transfers of title or any interest therein are not subject to the provisions of this section, provided, however, that the resale controls shall continue to run with the land following such transfers: transfers by gift, devise, or intestate succession to the owner's spouse or children, and transfers of title to a spouse as part of a dissolution of marriage proceeding or in conjunction with marriage.

(Prior gen. code §§ 8-407—8-407.4)

17.~~56~~ 106.~~090~~ 110 - Application procedure.

A. An applicant may submit to the planning director a preliminary proposal for a housing development pursuant to this chapter prior to the submittal of any formal housing development application. The planning director shall, within ninety (90) days of receiving a preliminary proposal, provide the applicant a written preliminary evaluation of the housing development.

B. In addition to the county's usual development requirements, formal application for a housing development under this chapter shall include the following information:

1. A written statement specifying the desired density increase, incentive requested, and the number, type, location, size and construction schedule of all dwelling units;

2. If necessary for the planning director to evaluate the financial need for additional incentives, the applicant shall submit a report that contains housing development costs and revenues, including but not limited to land, construction, and financing costs, and revenues from restricted units, unrestricted units, and density bonus units. Such other information as the planning director needs to evaluate the housing development may be requested by the planning director. The planning director may retain a consultant to review the financial report. The cost of the consultant shall be borne by the applicant;

3. Any other information requested by the planning director to implement this chapter.

C. Housing developments that meet the requirements set forth in Section ~~17.56.040~~ 17.106.040 (Density bonus qualifications) above shall qualify for a density bonus and at least one incentive, unless the planning director adopts a written finding that the incentive is not required to achieve the economic feasibility of the restricted units. The planning director may also provide an incentive in place of a density bonus that is of equivalent value to the density bonus. Such incentive shall be calculated in a manner determined by the planning director.

(Ord. 93-5 § 1 (part): prior gen. code §§ 8-408—8-408.3)

17.106.120 – Density Bonus--Child Care Facilities.

A. When an applicant proposes a housing development that is eligible for a density bonus under this chapter and includes a child care facility on the premises or adjacent to the housing development, the applicant shall receive an additional density bonus that is in an amount of square feet of residential space that is equal to the square footage of the child care facility; or the applicant may receive another incentive that contributes significantly to the economic feasibility of the construction of the child care facility, provided that, in both cases, the following conditions are incorporated in the conditions of approval for the housing development:

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 restricted units are required to remain affordable pursuant to the terms of the affordable housing agreement executed between the County and the developer.

2. Attendance of children at the child care facility shall have an equal or greater percentage of children from very low, low, and moderate income households than the percentage of affordable units in the housing development.

B. The County may deny the request for a density bonus or incentive for a child care facility if the county finds, based upon substantial evidence, that the community has adequate child care facilities without the facilities being considered as part of the subject housing development.

17.106.130 - Density Bonus--Donation of land.

A. When an applicant for a tentative subdivision map, parcel map or other residential development donates land to the County, the applicant shall be entitled to a density bonus above the maximum allowable residential density, up to a maximum of thirty five (35) percent depending on the amount of land donated. This increase shall be in addition to any increase in density permitted by this chapter up to a maximum combined density increase of 35 percent. A density bonus for donation of land shall only be considered 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 the amount not less than ten percent (10%) of the residential units in the proposed development.

3. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 (forty) 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 transferred 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 units on the transferred land, except that the County may subject the proposed development to subsequent design review if the design is not reviewed by the County prior to the time of transfer.

4. The transferred land and the units constructed on said land shall be subject to a deed restriction ensuring continued affordability of the units for a period of at least thirty (30) years and subject to restrictions consistent with California Government Code Section 65915 (c)(1) and (2), as may be periodically amended.

5. The land is transferred to the County or to a housing developer approved by the County.

6. The transferred land shall be within the boundary of the proposed development or, if the County determines appropriate, within one-quarter mile of the boundary of the proposed development.

17.~~56~~ 106.~~100~~ 140 - Administration and fees.

A. At the discretion of the planning director, the county may contract with another entity to administer the rental and sales provisions of this chapter.

B. The planning director shall establish the amount of fees to be charged to applicants for administration of this chapter at the cost of staff time attributable to such administration. These fees may be waived or reduced as specified in Section ~~17.56.030~~ 17.106.030 (Definitions) under subsection (4)(a) of the definition of "incentive" ~~subsection (4)(a)~~.

C. The planning director shall be responsible for monitoring the resale of restricted units.

D. The planning director shall adopt regulations and forms necessary to implement and interpret the provisions of this chapter.

(Ord. 93-5 § 1 (part): prior gen. code §§ 8-409—8-409.4)

CONCLUSION

Based upon a review of statutes regarding density bonuses, staff recommends that the County amend its Zoning Ordinance. At this time, staff requests that the Committee provide comments on the proposed revisions prepared by staff.

ATTACHMENTS

Government Code Sections 65915 - 65918

PREPARED BY:	Angela C. Robinson Piñon, Planner
REVIEWED BY:	Elizabeth McElligott, Assistant Planning Director

GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost

as defined in Section 50052.5 of the Health and Safety Code.

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

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

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

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

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

(C) The concession or incentive would be contrary to state or federal law.

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

(A) One incentive or concession for projects that include at least

10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

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

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

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

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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

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

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9

15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

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

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

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

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

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

(D) 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, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

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

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises

of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

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

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels . The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California

Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

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

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a

development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

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

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

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

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing

requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to

the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

STAFF REPORT

TO Members of the Ordinance Review Advisory Committee
RE Mobilehomes
MEETING DATE January 10, 2012

GENERAL INFORMATION

The following is an overview of policies pertaining to mobilehome parks and amendments to the Alameda County Zoning Ordinance regarding such housing necessary to comply with State law.

STAFF RECOMMENDATION

Staff requests that the Committee hear the staff presentation on the topic and provide feedback on the proposed Zoning Ordinance amendments

STAFF ANALYSIS

Background and Rationale for Proposed Amendments

Section 65852.7 of the California Government Code specifies that a mobilehome park shall be a permitted use on "all land planned and zoned for residential land use." However, local jurisdictions are allowed to require use permits for mobilehome parks.

Currently, mobilehome parks are conditionally permitted only within the Residential Suburban (RS) district, elsewhere they are considered legal nonconforming uses. Many of those long-standing sites were given the notation "M-H" in some Planning Department documents, and as a result the term "M-H" was incorrectly described as a zoning district in the 2009 Housing Element Update. Staff does not recommend that the Housing Element be amended to correct the error as an amendment would require additional review by the State Department of Housing and Community Development; however, the County should amend its Zoning Ordinance such that mobilehome parks are conditionally permitted in all residential zones as stipulated in Government Code Section 65852.7. State law does not specify a minimum acreage requirement for mobilehome parks; currently the County Zoning Ordinance requires that mobilehomes be located on parcels that are at least five acres in size. Also, while staff does not recommend that the building density be changed, staff does recommend that the density be stated within the section pertaining to mobilehome parks rather than by reference. Also, staff has added Section 17.52.1065 to refer readers to existing parking requirements for mobilehome parks permitted by the County.

Existing Definitions

The following definitions apply to mobilehomes:

"Dwelling unit" means a room, or a suite of connecting rooms, designed for use as separate living quarters or used as separate living quarters and constituted as a separate and independent housekeeping unit and having its own kitchen facilities consisting of one or more of the following: sink, cooking facility or refrigerator. Any detached structure containing a full bath including a water closet, basin and shower or tub or containing a half bath including a water closet and basin, the area of which half bath exceeds twenty (20) square feet, shall also be considered a dwelling unit.

The term "dwelling unit" shall also include for the purposes of this title a one-family mobilehome constructed after July 15, 1976, and issued an insignia of approval by the U.S. Department of Housing and Urban Development and permanently located on a foundation system.

"Mobilehome" means a factory-assembled structure or structures transportable in one or more sections, that is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation where connected to the required utilities, including but not limited to plumbing, electrical, heating and air-conditioning contained therein and installed in accordance with Title 15.

"Mobilehome park" is any building site where one or more mobilehome sites are rented or leased or held out for rent or lease or for sale as a unit of a condominium to accommodate mobilehomes used for human habitation.

"Mobilehome site" is that portion of a mobilehome park designed or used for the occupancy of one mobilehome.

Draft Ordinance Amendments

*****Highlighted and underlined text is new*****

Proposed Conditional Uses to be Added to All Residential Zones

- Mobilehome parks subject to the provisions provided in sections 17.52.1000 to 17.52.1065

Proposed Revision to Existing Performance Standards

17.52.1000 - Mobilehome parks.
The regulations set forth in this and following sections shall apply to the construction, maintenance and operation of mobilehome parks established after November 30, 1969, and to the expansion of any mobilehome park existing on November 30, 1969.
(Prior gen. code § 8-70.0)

17.52.1010 - Mobilehome parks—Building site.
All mobilehome parks shall be on a building site having an area not less than five acres and a median lot width not less than three hundred (300) feet.

17.52.1020 - Mobilehome parks—Density.
~~The maximum permitted number of mobilehome sites shall be determined in accordance with Section 17.12.050, equating the term "dwelling unit" with the term "mobilehome site."~~
Except as otherwise provided in a combining district or specific plan, the number of dwelling units permitted on a building site in a mobilehome park shall not exceed the number obtained by dividing the area in square feet of the building site by five thousand (5,000), disregarding any fraction.

17.52.1030 - Mobilehome parks—Mobilehome sites.
Mobilehome sites shall have a minimum area of two thousand five hundred (2,500) square feet and a minimum width of thirty-five (35) feet.
(Prior gen. code § 8-70.3)

17.52.1040 - Mobilehome parks—Utilities.
All utilities within the mobilehome park boundaries shall be underground.
(Prior gen. code § 8-70.4)

17.52.1050 - Mobilehome parks—Common areas.
There shall be provided within the park a minimum of three hundred (300) square feet of common area for each mobilehome site. This area shall be divided in appropriate amounts for recreation areas and buildings, storage areas and utility areas with the recreation area provided at not less than two hundred (200) square feet per site. The common areas shall have a minimum width of ten feet and shall include no portion of the required front yard, roadways, parking areas, mobilehome sites or areas with a ground slope exceeding twenty (20) percent.
(Prior gen. code § 8-70.5)

17.52.1060 - Mobilehome parks—Fencing.
The perimeter of the mobilehome park shall be surrounded by a fence equal to the height permitted by Section 17.52.430.
(Prior gen. code § 8-70.6)

17.52.1065 - Mobilehome parks—Parking.
Parking shall be provided in accordance with Section 17.52.910 (Parking spaces required—Residential buildings)

Parking Regulations

*****(Please note that text addressing Mobilehome parks is unchanged)*****

Table 17.52.910 Parking Spaces Required for Residential Buildings	
Use	Number of Spaces Required
Dwelling, including single, two-family and multiple residences, group dwellings, apartment houses, apartment hotels, and all other similar structures devoted to habitation	2 for each dwelling unit, plus 1 for each bedroom available for accommodating a paying guest
Hotel, motel, boarding house, clubhouse, fraternity or sorority, and single room occupancy facilities	2 plus 1 for each bedroom available for ~~sorority;~~ accommodating ~~guests~~ a paying guest
Medical or residential care facility, and transitional and supportive housing developments	2 plus 1 for each 6 beds for persons not related to the resident family or manager
Hospital	2 plus 1 for each 4 patient beds, (except that those patient beds designated as "long term care beds" by the State Department of Public Health may be computed 1 per 6 patient beds) plus 1 for each staff doctor; plus 1 for each 1,000 square feet of gross floor area in the main building or buildings
Mobilehome park	2 for each mobilehome site located on each mobilehome site; other provisions of this title notwithstanding, the access to one

	of these spaces may be within the access to the second space; plus 1 for each 10 mobilehome sites
Recreational vehicle park	1 for each recreational vehicle site located on each recreational vehicle site, plus 1 for each 15 recreational vehicle sites
Emergency shelter	3 plus 1 per each 10 individual beds.
Agricultural employee housing	1 space per unit, or 1 for each 4 beds

CONCLUSION

Based upon a review of relevant statutes, staff recommends mobilehomes be conditionally permitted in all residential zones. Staff also request that the Committee comment on the existing and proposed regulations for mobilehome parks.

RELEVANT STATUTES

Excerpted from the Government Code:

65852.3. (a) A city, including a charter city, county, or city and county, shall allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Secs. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on lots zoned for conventional single-family residential dwellings. Except with respect to architectural requirements, a city, including a charter city, county, or city and county, shall only subject the manufactured home and the lot on which it is placed to the same development standards to which a conventional single-family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking, aesthetic requirements, and minimum square footage requirements. Any architectural requirements imposed on the manufactured home structure itself, exclusive of any requirement for any and all additional enclosures, shall be limited to its roof overhang, roofing material, and siding material. These architectural requirements may be imposed on manufactured homes even if similar requirements are not imposed on conventional single-family residential dwellings. However, any architectural requirements for roofing and siding material shall not exceed those which would be required of conventional single-family dwellings constructed on the same lot. At the discretion of the local legislative body, the city or county may preclude installation of a manufactured home in zones specified in this section if more than 10 years have elapsed between the date of manufacture of the manufactured home and the date of the application for the issuance of a permit to install the manufactured home in the affected zone. In no case may a city, including a charter city, county, or city and county, apply any development standards that will have the effect of precluding manufactured homes from being installed as permanent residences.

(b) At the discretion of the local legislative body, any place, building, structure, or other object having a special character or

special historical interest or value, and which is regulated by a legislative body pursuant to Section 37361, may be exempted from this section, provided the place, building, structure, or other object is listed on the National Register of Historic Places.

65852.4. A city, including a charter city, a county, or a city and county, shall not subject an application to locate or install a manufactured home certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on a lot zoned for a single-family residential dwelling, to any administrative permit, planning, or development process or requirement, which is not identical to the administrative permit, planning, or development process or requirement which would be imposed on a conventional single-family residential dwelling on the same lot. However, a city, including a charter city, county, or city and county, may require the application to comply with the city's, county's, or city and county's architectural requirements permitted by Section 65852.3 even if the architectural requirements are not required of conventional single-family residential dwellings.

65852.7. A mobilehome park, as defined in Section 18214 of the Health and Safety Code, shall be deemed a permitted land use on all land planned and zoned for residential land use as designated by the applicable general plan; provided, however, that a city, county, or a city and county may require a use permit. For purposes of this section, "mobilehome park" also means a mobilehome development constructed according to the requirements of Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code, and intended for use and sale as a mobilehome condominium or cooperative park, or as a mobilehome planned unit development. The provisions of this section shall apply to a city, including a charter city, a county, or a city and county.

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