ORDINANCE 620-AC

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEEDLES, CALIFORNIA, AMENDNG NEEDLES MUNICIPAL CODE (NMC) RESCINDING ARTICLE VII SECTION 97.01 "AFFORDABLE AND ELDERLY HOUSING BONUS" AND REPLACING IT WITH A NEW SECTION 97.01 "DENSITY BONUS AND RELATED INCENTIVES AND CONCESSIONS PROGRAM"

WHEREAS, it is the intent of the City to implement federal and state housing laws and the policies and programs contained in the City of Needles' General Plan, including the Housing Element; and

WHEREAS,it is in the best interest of the public to establish reasonable standards relating to provisions of affordance housing; and

WHEREAS, California Government Code Section 65915 requires municipalities to allow specified combinations of density bonuses, incentives and concessions to projects that provide either housing for seniors, or for individuals of low income, very low income, or of moderate income in comment interest developments; and

WHEREAS, it is the intent of the City to implement federal and state housing laws and the policies and programs contained in the City of Needles' General Plan, including the Housing Element; and

WHEREAS, a public hearing notice for the Needles Planning Commission meeting was published in the Needles Desert Star on Wednesday, June 12, 2019 and the San Bernardino Sun on Sunday, June 9, 2019; and

WHEREAS, on June 19, 2019, the Needles Planning Commission held a duly noticed and advertised public hearing to receive oral and written testimony relative to **RESOLUTION 06-19-2019-6** PC recommending City Council approval on the Needles Municipal Code (NMC) change; and

WHEREAS, a public hearing notice for the Needles Planning Commission meeting was published in the Needles Desert Star on Wednesday, June 12, 2019 and the San Bernardino Sun on Sunday, June 9, 2019; and posted in two conspicuous locations; and

WHEREAS, on July 9, 2019, the Needles City Council held a duly noticed and advertised public hearing to receive oral and written testimony relative to the amendment to the Needles Municipal Code (NMC); and

WHEREAS, the Needles City Council has sufficiently considered all testimony and any documentary evidence presented to them in order to make the following determination:

SECTION 1. The City Council HEREBY FINDS AND DETERMINES that this activity is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Section §§ 15060 (c)(2), the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment

8-13-19 #13

SECTION 2. The City Council HEREBY FINDS AND DETERMINES that facts do exist to approve an amendment to the Needles Municipal Code (NMC), attached as "Exhibit "A".

SECTION 3. The City Council HEREBY APPROVES Ordinance 620-AC for an amendment to the Needles Municipal Code (NMC) attached as Exhibit "A".

SECTION 4. This action shall become final and effective 30 days after this decision by the City Council as provided by the Needles City Code.

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Needles, California, approves an amendment to the City Code.

INTRODUCED AND READ for the first time and ordered posted at a regular meeting of the City Council of the City of Needles, California, held on the 9th day of July, 2019, by the following roll call vote:

AYES: Councilmembers Gudmundson, Terral, Paget, Belt and Longacre
NOES None
ABSENT Councilmember Hazlewood
ABSTAIN None

Mayor

Attest: Dale Jones
City Clerk

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Needles, California, held on the 13th day of August, 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor

(Seal) Attest:

City Clerk

Approved as to form:

City Attorney

EXHIBIT "A" (HCD)

AFFORDABLE AND ELDERLY HOUSING BONUS

Changes to Needles Municipal Code (NMC):

Repeal Section 97.01 "Affordable and elderly housing bonus" of Article VII "Intensity of Uses", is hereby repealed.

New Section 97.01 is hereby added to Article VII "Intensity of Use" which shall be entitled, "Density Bonus and Related Incentives and Concessions Program".

SECTION 97.01. DENSITY BONUS AND RELATED INCENTIVES AND CONCESSIONS PROGRAM

Sec. 97.01(a) Purpose

The purpose of this Section 97.01 is to satisfy the requirements set forth in Government Code Section 65915, *et seq.* (known as the State Density Bonus Law). If any provision of this Division conflicts with state law, or provides more rights than are legally required by state law, the minimum requirements of State law shall control.

Sec. 97.01(b). Definitions

The following definitions shall control over any conflicting definitions in other Sections of the Needles Municipal Code. State law definitions, as they may be amended from time to time, control over the definitions in this section.

(1) Affordable Housing Benefits means one or more of the following:

a) A Density Bonus pursuant to Section 97.01(h);
b) An Incentive pursuant to Section 97.01(l);
c) A Development Standard Waiver or Modification pursuant to Section 97.01(o); and
d) A Parking Standard Modification pursuant to Section 97.01(p).

(2) Affordable Housing Cost means the definition set forth in Health and Safety Code Section 50052.5. (Gov. Code § 65915(c)(1)).

(3) Affordable Housing Developer means the applicant or permittee of a Qualified Housing Development and its assignees or successors in interest.

(4) Affordable Rent means the definition set forth in Health and Safety Code Section 50053. (Gov. Code § 65915(c)(1)).

(5) Affordable Unit means a residential dwelling unit that is guaranteed by the Affordable Housing Developer to be rented or sold in accordance with the requirements of this section to one of the following:

a) a Very Low Income Household;

b) a Low Income Household; or

c) a Moderate Income Household within a Common Interest Development. (Gov. Code §§ 65915(c)(1)-(c)(2)).

(6) Child Care Facility - 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 school age child care centers. (Gov. Code § 65915(h)(4)).

(7) City - means the City of Needles

(8) Common Interest Development - means any of the following: a community apartment project, a condominium project, a planned development, and a stock cooperative pursuant to Civil Code Section 1351(c) and pursuant to Civil Code Section 4100. (Gov. Code § 65915(c)(2)) All Common Interest Development units must be offered to the public for purchase. (Gov. Code § 65915(b)(1)(D)).

(9) Condominium Conversion Project – means a residential project in which the applicant proposes to convert apartment units to condominiums pursuant to Government Code Section 65915.5(a).

(10) Density Bonus – Condominium Conversion Projects: means a density increase over the otherwise Maximum Allowable Residential Density as of the date of application to the City for a Qualified Housing Development. (Gov. Code § 65915(f))

(11) Density Bonus Units – means dwelling units granted which exceed the otherwise Maximum Allowable Residential Density.

(12) Development Standard – means a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an on-site open-space requirement, or a parking ratio, that applies to a residential development pursuant to the Zoning Ordinance, the General Plan or other City condition, law, policy, resolution, or regulation. (Gov. Code § 65915(o)(1)).

(13) Eligible housing development" means a development that satisfies all of the following criteria:

(a) The development is a multifamily housing development that contains five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(b) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(c) The site of the development is zoned to allow residential use or mixed-use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for exclusive nonresidential use.

(d) The applicant and the development satisfy the replacement requirements specified in subdivision (c) of Section 65915.

(e) The development includes at least 20 percent of the units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code, and subject to an affordability restriction for a minimum of 55 years.

(f) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation.

(2) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(3) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(4) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county, calculated pursuant to paragraph (2) of subdivision (b).

(14) Housing Development – means a development project of five or more residential units and includes a subdivision or Common Interest Development that is approved by the City 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 where the result of the rehabilitation would be a net increase in available residential units. (Gov. Code § 65915(i)).

(15) Household Income Category Definitions

a) Very Low Income Household – means a household whose income does not exceed fifty percent (50%) of the County's median household income as defined in Health and Safety Code Section 50105. (Gov. Code § 65915(b)(1)(B)).

b) Low Income Household – means a household whose income does not exceed eighty percent (80%) of the County's median household income as defined in Health and Safety Code Section 50079.5. (Gov. Code § 65915(b)(1)(A)).

c) Moderate Income Household – means persons or families whose income does not exceed one hundred and twenty percent (120%) of the County's median household income as defined in Health and Safety Code Section 50093. (Gov. Code § 65915(b)(1)(D)).

(16) Incentive – means "incentives and concessions" as that phrase is used in Government Code Section 65915.

(17) "Lower income **students**" means **students** who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code.

(1) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(18) Market-Rate Unit - means a dwelling unit that is not an Affordable Unit.

(19) Maximum Allowable Residential Density - means the density allowed under the applicable Zoning Ordinance and the 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. (Gov. Code § 65915(o)(2)).

(19) Minimum Affordable Housing Component - means a Housing Development project which includes a minimum of any of the following:

(a) Very Low Income Minimum Affordable Housing Component - Provides at least five percent (5%) of the Total Units for Very Low Income Household residents (Gov. Code § 65915(b)(1)(B)); or

(b) Low Income Minimum Affordable Housing Component - Provides at least ten percent (10%) of the Total Units for Low Income Households (Gov. Code § 65915(b)(1)(A)); or

(c) Moderate Income Minimum Affordable Housing Component - Provides at least ten percent (10%) of the Total Dwelling Units in a Common Interest Development for

moderate income households (Gov. Code § 65915(b)(1)(D)).

(20) Other Incentives of Equivalent Financial Value - means the reduction or waiver of requirements which the City might otherwise apply as conditions of condominium conversion approval, but shall not be construed to require the City to provide cash transfer payments or other monetary compensation. (Gov. Code § 65915.5(c)).

(21) Qualified Housing Development - means a Housing Development that meets the requirements of Section 97.01(c) for Density Bonus.

(22) Qualified Land - means land offered for donation in accordance with Section 97.01(k) that meets the criteria set forth in Section 97.01(k).

(23) Senior Citizen Housing Development - means a residential development that is developed, substantially rehabilitated, or substantially renovated for, senior citizens and that has at least thirty-five (35) Senior Citizen Housing Development Units. (Gov. Code § 65915(b)(1)(C)).

(24) Senior Citizen Housing Development Unit - means a residential dwelling unit within a Senior Citizen Housing Development that is available to, and occupied by, a senior citizen as defined in Civil Code Section 51.3.

(25) Specific, Adverse Impact - means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application for the Housing Development was deemed complete. Inconsistency with the Zoning Ordinance or General Plan land use designation shall not constitute a specific, adverse impact upon the public health or safety. (Gov. Code § 65589.5(d) (2)).

(26) Total Units and Total Dwelling Units - means dwelling units other than Density Bonus Units. (Gov. Code § 65915(b)(3)).

(27) Transit priority area" has the same meaning as defined in Section 21155 of the Public Resources Code

(27) Zoning Ordinance - means the Needles Zoning Ordinance set forth in Part III "Zoning" of the City of Needles Municipal Code.

Sec. 97.01(c). Eligibility for Density Bonuses and Incentives

Density Bonuses are available to Affordable Housing Developers in accordance with this Division for the following:

(1) Housing Developments which include a Minimum Affordable Housing Component (Section 97.01(h) and Section 97.01(t)(1))

(2) Housing Developments which include a Minimum Affordable Housing Component and a Child Care Facility (Section 97.01(i));

(3) Senior Citizen Housing Developments (Section 97.01(j)); and

(4) Land Donations for Very Low Income Housing (Section 97.01(k)).

(5) Housing Development which include a Student Housing Component (

For the purpose of calculating a Density Bonus, the residential units must 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.

Sec. 97.01(d). Fees

1) An application for a Density Bonus Permit shall be accompanied by the fee set by resolution of the City Council.

2) If an application for a Density Bonus Permit requires an unusual amount or specialized type of study or evaluation by City staff, a consultant or legal counsel, City staff shall estimate the cost thereof and require the applicant to pay an additional fee or make one or more deposits to pay such cost before the study or evaluation is begun. On completion of the study or evaluation, and before the City Council decides the application, City staff shall determine the actual cost of the work and the difference between the actual cost and the amount paid by the applicant, and shall require the applicant to pay any deficiency or shall refund to the applicant any excess.

Sec. 97.01(e). Application Required

When an applicant seeks a density bonus for a Housing Development that meets the criteria set out in Section 97.01(h) (Gov. Code, § 65915) the Affordable Housing Developer must comply with all of the following requirements:

(1) The applicant shall file an application for a Density Bonus Permit in accordance with Sections 97.01(e) and 97.01(f) that includes a Minimum Affordable Housing Component, whether or not the project also requires or has been granted a special use permit or other permits or approvals. (Gov. Code § 65915(b)(1)).

(2) State in the application the specific Minimum Affordable Housing Component proposed for the Housing Development. (Gov. Code § 65915(b)(2)).

(3) Enter into an agreement with the City or its designee pursuant to Section 97.01(s) to maintain and enforce the Affordable Housing Component of the Housing Development. (Gov. Code § 65915(c)).

Sec. 97.01(f). Content of Application

(1) The application for a Density Bonus Permit shall include the following information:

(a) A description of the project, including the number of dwelling units, the number of affordable units and level of affordability, and the location of the affordable units;

(b) A description of the density bonus and the incentives or concessions requested, if any, in accordance with Section 97.01(h) thru Section 97.01(m) (Gov. Code Section 65915(b)(2));

(c) For Parking Standard Modification requests, that the requirements of Gov. Code, Section 65915(p)) are met

(d) The location, design, and phasing criteria required by Section 97.01(q), including any proposed Development Standard(s) modifications or waivers pursuant to Section 97.01(o);

(e) Any proposal for the waiver or reduction of development standards which waiver or reduction is required to allow the City to avoid physically precluding the construction of a development meeting the criteria of Gov. Code Section 65915(b) at the densities or with the concessions or incentives permitted by the statute;

(f) The proposed method of ensuring the continued affordability of all low, very low, or moderate rental units, or senior units, or child care facilities, that qualified the applicant for the award of the density bonus for at least 55 years, as required by Gov. Code, Section 65915(c)(1); and

(g) Other relevant information requested by City staff.

(2) For the application for a Density Bonus Permit for the donation of Qualified Land pursuant to Section 97.01(k), the application must show the location of the Qualified Land in addition to including sufficient information to establish that each requirement of that section has been met. (Gov. Code § 65915(g)(2));

(3) The application for a Density Bonus Permit for a Housing Development that conforms to the requirements of section 97.01(i) and/or section 97.01(l). (Gov. Code, Section 65915(b)) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, shall show the location and square footage of the Child Care Facility in addition to including sufficient information as how the applicant proposes to regulate attendance at the child care facility to conform to the requirements of Gov. Code Section 65915(h)(2)(B).

(4) An application for a Density Bonus permit will not be processed until all of the provisions of this Section are complied with as determined by the director and shall be processed concurrently with other required entitlements for which the Affordable Housing Benefit is sought. Prior to the submittal of an application for a Qualified Housing Development, an applicant may submit to the director a preliminary proposal for Affordable Housing Benefits. The director shall, within 90 days of receipt of a written

proposal, notify the applicant of the director's preliminary response and schedule a meeting with the applicant to discuss the proposal and the director's preliminary response. Approval of a Density Bonus permit shall be at the same level as the planning entitlement action for the project with the highest requirement.

Sec. 97.01(g). Effect of Proposal for Waiver or Reduction of Development Standards.

A proposal for a waiver or reduction of development standards shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Gov. Code, Section 65915(d).

Sec. 97.01(h). Density Bonus Allowance for Housing Development with Affordable Housing Component

If the requirements of Section 97.01(c) are met, then the Affordable Housing Developer is entitled to a Density Bonus pursuant to Government Code Section 65915(f) as follows:

Table 97.01(h) - Density Bonus Allowance for Housing Development Projects with Affordable Housing Component

Household Income Category	Minimum Affordable Units	Minimum Density Bonus	Additional Density Bonus For Each 1% Increase in Affordable Units	Maximum Possible Density Bonus
Affordable Housing Development				
Very Low Income	5%	20%	2.5%	35%
Low Income	10%	20%	1.5%	35%
Moderate Income (Common Interest Developments)	10%	5%	1%	35%

As demonstrated in Table 97.01(h), the amount of Density Bonus to which the applicant is entitled shall vary according to the amount by which the percentage of Affordable Units offered by the applicant exceeds the percentage of the Minimum Affordable Housing Component; the applicant may also elect to accept a lesser percentage of Density Bonus. (Gov. Code § 65915(f)). All density calculations resulting in fractional units shall be rounded up to the next whole number. (Gov. Code § 65915(f)(5)).

Sec. 97.01(i). Density Bonus for Housing Development with Affordable Housing Component and Child Care Facility

(1) Criteria. For a Density Bonus to be granted pursuant to Section 97.01(i) for including a Minimum Affordable Housing Component with a Child Care Facility in a Housing

Development, all of the following must be satisfied:

(a) Compliance with each requirement in Section 97.01(c). (Gov. Code § 65915(h)(1)).

(b) The Housing Development must include a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Housing Development. (Gov. Code § 65915(h)(1)).

(c) Approval of the Housing Development must be conditioned to ensure that both of the following occur:

1. The Child Care Facility must remain in operation for a period of time that is as long as or longer than the period of time during which the Affordable Units are required to remain affordable pursuant to Section 97.01(s) (Gov. Code § 65915(h)(2)(A)).

2. Of the children who attend the Child Care Facility, the children of Very Low Income Households, Low Income Households, or Moderate Income Households must equal a percentage that is equal to or greater than the percentage of dwelling units that are required under the respective Minimum Affordable Housing Component Income Category for which the Density Bonus is sought (Gov. Code § 65915(h)(2)(B)).

(d) The City has not made a finding based upon substantial evidence that the community has adequate Child Care Facilities. (Gov. Code § 65915(h)(3)).

(2) Density Bonus Allowance. If the requirements of Section 97.01(i)(1) are met, then an applicant for a Housing Development with an Affordable Housing Component and Child Care Facility is entitled to:

(a) A Density Bonus pursuant to Section 97.01(h); and

(b) 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. (Gov. Code § 65915(h)(1)(A)).

Sec. 97.01(j). Density Bonus for Senior Citizen Housing Development

An applicant for a Senior Citizen Housing Development or a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5 is entitled to a Density Bonus of twenty percent (20%) of the number of Senior Citizen Housing Development Units. (Gov. Code § 659 15(b)(1)(C), (f)(3)).

Sec. 97.01(k). Density Bonus for Land Donations

For a Density Bonus for a Qualified Land donation to be granted pursuant to Section 97.01(k), all

of the requirements of state law, as it may be amended from time to time, shall be met. See Gov. Code 65915(g). For qualifying donations, the City shall award a 15% density bonus, but in no event shall the total density bonus from all sources exceed 35%. (Gov. Code § 659 15(g)(2).

Section 97.01(l) Density Bonus for Student Housing

For a density bonus for a student housing project to be granted pursuant to Section 97.01(l), all of the requirements of state law, as it may be amended from time to time, shall be met, as identified below and in Gov. Code 65915(F)(i).

(1) Requirements for Student Housing Density Bonus:

(a) All units in the **student** housing development will be used exclusively for undergraduate, graduate, or professional **student**s enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city or county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the **student** housing development with **student**s from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient **student**s enrolled in an institution of higher education to fill all units in the **student** housing development.

(b) The applicable 20-percent units will be used for lower income **student**s. The eligibility of a **student** shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the **student** is enrolled in, as described in subclause (I), or by the California **Student** Aid Commission that the **student** receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California **Student** Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(c) The rent provided in the applicable units of the development for lower income **student**s shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(d) The development will provide priority for the applicable affordable units for lower income **student**s experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

i. For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

97.01 (m) Floor Area Ratio Density Bonus

For a Floor Area Ratio density bonus to be granted pursuant to Section 97.01(m) all of the requirements of State law, as it may be amended from time to time, shall be met, as identified below and in Gov. Code 65917.2

(1) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio bonus, calculated as provided in paragraph (a), in lieu of a density bonus awarded on the basis of dwelling units per acre

(a) In calculating the floor area ratio bonus pursuant to this section, the allowable gross residential floor area in square feet shall be the product of all of the following amounts:

(1) The allowable residential base density in dwelling units per acre.
(2) The site area in square feet, divided by 43,560.
(3) 2,250.

(b) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(c) A city or county that adopts a floor area ratio bonus ordinance pursuant to this section shall allow an applicant seeking to develop an eligible residential development to calculate impact fees based on square feet, instead of on a per unit basis.

(d) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(e) An applicant for a floor area ratio bonus pursuant to this section may also submit to the city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

(f) This section shall not be interpreted to do either of the following:

(1) Supersede or preempt any other section within this chapter.

(2) Prohibit a city, county, or city and county from providing a floor area ratio bonus under terms that are different from those set forth in this section.

Sec. 97.01(l). Affordable Housing Incentives

Government Code subsections 65915(d), (j), (k) and (l) govern the following provisions regarding affordable housing incentives. Subject to Section 97.01(n), all of the following applicable requirements must be satisfied to be granted an Incentive(s) pursuant to Sections 16-97.01(l)(2) and 97.01(m):

(1) The applicant for an Incentive must also be an applicant for a Density Bonus and qualify for a Density Bonus pursuant to Section 97.01(c) (Gov. Code § 659 15(d)(1));

(2) A specific written proposal for an Incentive(s) must be submitted with the application for Density Bonus in accordance with Section 97.01(f) (Gov. Code § 65915(b)(1) and (d)(1));

(3) If an Incentive(s) pursuant to Sections 97.01(l) and 97.01(m) is sought, the applicant must establish that each requested Incentive would result in identifiable, financially sufficient, and actual cost reductions for the Qualified Housing Development (Gov. Code § 659 15(k)(1) & (3));

(4) If an Incentive(s) pursuant to Section 97.01(l)(2) is sought, the applicant must establish that requirements of that section are met (Gov. Code § 65915(k)(2)); and

(5) If an additional Incentive for a Child Care Facility is sought pursuant to Section 97.01(m)(4), the applicant must establish that requirements of that section are met.

(6) The granting of an 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. (Gov. Code § 65915(j).) An Incentive is applicable only to the project for which it is granted.

Sec. 97.01(m). Number of Incentives Granted

Subject to Section 97.01(n), the applicant who meets the requirements of Section 97.01(l)(a) shall receive the following number of Incentives described below and as shown in Table 97.01(m).

(1) One Incentive for Qualified Housing Development projects that include at least ten percent (10%) of the Total Units for Low Income Households, at least five percent

(5%) for Very Low Income Households, or at least ten percent (10%) for persons and families of Moderate Income Households in a Common Interest Development. (Gov. Code § 65915(d)(2)(A)).

(2) Two Incentives for Qualified Housing Development projects that include at least twenty percent (20%) of the Total Units for Low Income Households, at least ten percent (10%) for Very Low Income Households, or at least twenty percent (20%) for persons and families of Moderate Income Households in a Common Interest Development. (Gov. Code § 65915(d)(2)(B)).

(3) Three Incentives for Qualified Housing Development projects that include at least thirty percent (3 0%) of the Total Units for Low Income Households, at least fifteen percent (15%) for Very Low Income Households, or at least thirty percent (30%) for persons and families of Moderate Income Households in a Common Interest Development. (Gov. Code § 65915(d)(2)(C)).

(4) Subject to Section 97.01(n)(d), a Qualified Housing Development proposal that includes a Child Care Facility shall be granted an additional incentive that contributes significantly to the economic feasibility of the construction of the Child Care Facility. (Gov. Code § 65915(h)(1)(B)).

Table 97.01(m) . Incentive Allowances for Qualified Housing Developments

Income Category	**Minimum % of Affordable Units**		
Very Low Income	5%	10%	15%
Low Income	10%	20%	30%
Common Interest Development (Moderate Income)	10%	20%	30%
Incentives Allowed	**1**	**2**	**3**

97.01(n). Criteria for Denial of Application for Incentives

Except as otherwise provided in this Section or by state law, if the requirements of Section 97.01(l)(1) are met, the City shall grant the Incentive(s) that are authorized by Sections 97.01(l)(2) and 97.01(m) unless a written finding, based upon substantial evidence, is made with respect to any of the following, in which case the City may refuse to grant the Incentive(s):

(1) The Incentive is not required in order to provide Affordable Housing Costs or Affordable Rents for the Affordable Units subject to the Qualified Housing Development application. (Gov. Code § 65915(d)(1)(A)).

(2) The Incentive would have a Specific, Adverse Impact, as defined in Government Code Section 655 89.5(d)(2), upon the 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. (Gov. Code § 65915(d)(1)(B); Gov. Code § 65915 (d)(3).)

(3) The Incentive would be contrary to state or federal law. (Gov. Code § 65915(d)(1)(C).)

(4) The City finds, based upon substantial evidence, that the community has adequate Child Care Facilities, in which case the additional Incentive for a Child Care Facility pursuant to Section 97.01(m)(4) may be denied. (Gov. Code § 659 15(h)(3)).

Sec. 97.01(o). Waiver or Modification of Development Standards

Requirements for Waiver or Modification of Development Standards

(1) Application. To qualify for a waiver or reduction of one or more Development Standards, the applicant must submit a written application (together with an application for a Qualified Housing Development) that states the specific Development Standard(s) sought to be modified or waived and the basis of the request. (Gov. Code § 659 15(e)(1).) An applicant for a waiver or modification of Development Standard(s) pursuant to this section may request a meeting with the director to review the proposal. If requested, the director shall meet with the applicant. (Gov. Code § 65915(e)(1)). An application for the waiver or reduction of Development Standard(s) pursuant to this section shall neither reduce nor increase the number of Incentives to which the applicant is entitled pursuant to Section 16-410L (Gov. Code § 65915(e)(2).)

(2) Findings. All of the following findings must be made for each waiver or reduction requested:

(a) The Development Standard for which a waiver or reduction is requested will have the effect of physically precluding the construction of the proposed Qualified Housing Development at the densities or with the Incentives permitted under this Section. (Gov. Code § 65915(e)(1)).

(b) The requested waiver or reduction of a Development Standard will not have a Specific, Adverse Impact, as defined in Government Code Section 65589.5(d)(2), upon the health, safety, or physical environment or, if such a Specific, Adverse Impact exists, there is a feasible method to satisfactorily mitigate or avoid the Specific, Adverse Impact. (Gov. Code § 65915(e)(1)).

(c) The requested waiver or reduction of a Development Standard will not have an adverse impact on any real property that is listed in the California Register of Historical Resources. (Gov. Code § 65915(e)(1)).

(d) The requested waiver or reduction of a Development Standard is not contrary to state or federal law. (Gov. Code § 65915(e)(1)).

(3) Granting Application for Waiver or Modification of Development Standards. If the requirements of Sections 97.01(o)(1). and (2) are satisfied, the application for waiver or modification of Development Standard(s) shall be granted. If the requirements of Sections 97.01(o)(1). and (2) are satisfied, the City shall not apply a Development Standard that will have the effect of physically precluding the construction of a Qualified Housing Development at the densities or with the Incentives permitted by this Section. (Gov. Code § 65915(e)(1)).

Sec. 97.01(p). Parking Standard Modifications for Qualified Housing Developments

(1) Requirements for Parking Standard Modifications. Modification of Parking standard set forth in Article XI "Vehicular Provisions" are available only for Qualified Housing Developments. An application for Parking Standard Modifications stating the specific modification requested must be submitted with the Qualified Housing Development application. (Gov. Code § 65915(p) (3).)

(2) Parking Standard Modifications. If the requirements of Article XI "Vehicular Provisions" are met, the vehicular parking ratio, inclusive of handicapped and guest parking, shall not exceed the following ratios (Gov. Code § 65915(p)(1)):

(a) Zero to one bedroom: one on-site parking space.

(b) Two to three bedrooms: two on-site parking spaces.

(c) Four and more bedrooms: two and one-half on-site parking spaces.

(3) If the total number of parking spaces required for the Qualified Housing Development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, "on-site parking" may be provided through tandem parking or uncovered parking, but not through on-street parking. (Gov. Code § 65915(p)(4)).

(4) Except as otherwise provided in this section, all other provisions of Article XI "Vehicular Provisions" applicable to residential development apply.

(5) An applicant may request additional parking Incentives beyond those provided in this section if applied for pursuant to Section 97.01(l).(Gov. Code § 65915(p)(5)).

(6) Exceptions. Upon request of the applicant, the following maximum parking standards shall apply, inclusive of handicap and guest parking, to the entire housing development subject to this Section, as required by Government Code Section 65915(p):

(a) A maximum of 0.5 parking spaces per bedroom shall apply when all the following conditions apply (Gov. Code 65915(p)(2)):

1) The development includes the maximum percentage of low- or very low-income units provided for Section 97.01(h) (Density Bonus Allowance

for Housing Development with Affordable Housing Component).

2) The development is located within .5 mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.

3) There is unobstructed access to the major transit stop from the development. A development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(b) A maximum of 0.5 parking spaces per unit shall apply when all the following conditions apply (Gov. Code § 65915 (p)(3)(A)):

1) The development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower-income families, as provided in Section 50052.5 of the Health and Safety Code.

2) The development is located within .5 mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.

3) There is unobstructed access to the major transit stop from the development. A development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(c) A maximum of 0.5 parking spaces per unit shall apply when all the following conditions apply (Gov. Code § 65915 (p)(3)(B):

1) The development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower-income families, as provided in Section 50052.5 of the Health and Safety Code.

2) The development is for individuals who are 62 years of age or older and which complies with Sections 51.2 and 51.3 of the Civil Code.

3) The development shall have either paratransit service or unobstructed access, within .5 mile, to fixed bus route service that operates at least eight times per day.

(d) A maximum of 0.3 parking spaces per unit shall apply when all the following conditions apply (Gov. Code § 65915 (p)(3) (C)):

1) The development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower-income families, as provided in Section 50052.5 of the Health and Safety Code.

2) The development is a special needs housing development, as defined in

Section 51312 of the Health and Safety Code.

3) The development shall have either paratransit service or unobstructed access, within .5 mile, to fixed bus route service that operates at least eight times per day.

(7) Notwithstanding allowances described above, if the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven years, then the City may impose a higher vehicular parking ratio not to exceed the ratio described in above, based on substantial evidence found in the parking study that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low- and very low- income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio. (Gov. Code § 65915(p)(7).

Sec. 97.01(q). Density Bonus and Affordable Housing Incentive Program

(1) Project Design and Phasing. Projects seeking an Affordable Housing Benefit pursuant to this Section must comply with the following requirements, unless otherwise specified in writing by the Director:

(a) Location/Dispersal of Units. Affordable Units shall be reasonably dispersed throughout the development where feasible and shall contain on average the same (or greater) number of bedrooms as the Market-rate Units.

(b) Phasing. If a project is to be developed in phases, each phase must contain the same or substantially similar proportion of Affordable Units and Market-rate Units.

(c) Exterior Appearance. The exterior appearance and quality of the Affordable Units must be similar to the Market-rate Units. The exterior materials and improvements of the Affordable Units must be similar to, and architecturally compatible with, the Market-rate Units.

(2) Application Requirements. An application for one or more Affordable Housing Benefits must be submitted as follows:

(a) Each Affordable Housing Benefit requested must be specifically stated in writing on the application form provided by the City.

(b) The application must include the information and documents necessary to establish that the requirements of this Section are satisfied for each Affordable Housing Benefit requested, including:

1) For Density Bonus requests, that the requirements of Section 97.01(c) are met;

2) For Incentive requests, that the requirements of Section 97.01(l) are met;

3) For Development Standard Waiver or Modification requests, that the requirements of Section 97.01(o) are met; and/or

4) For Parking Standard Modification requests, that the requirements of Article XI "Vehicular Provisions" are met.

(c) The application must be submitted concurrently with a complete application for a Qualified Housing Development.

(d) The application must include a site plan that complies with and includes the following:

(1) For Senior Citizen Housing Development projects the number and location of proposed Total Units and Density Bonus Units.

(2) For all Qualified Housing Development projects other than Senior Citizen Housing Development projects the number and location of proposed Total Units, Affordable Units, and Density Bonus Units. The Density Bonus Units shall be permitted in geographic areas of the Qualified Housing Development other than the areas where the Affordable Units are located. (Gov. Code § 65915(i)).

(3) The location, design, and phasing criteria required by Section 97.01(q)(1), including any proposed Development Standard(s) modifications or waivers pursuant to Section 97.01(o).

(e) The application for a Qualified Housing Development must state the level of affordability of the Affordable Units and include a proposal for compliance with Section 97.01(s) for ensuring affordability.

(f) If a Density Bonus is requested for a Qualified Land donation pursuant to Section 97.01(k), the application must show the location of the Qualified Land in addition to including sufficient information to establish that each requirement in Section 97.01(k) has been met.

(g) If an additional Density Bonus or Incentive is requested for a Child Care Facility pursuant to Section 97.01(i) and/or Section 97.01(m)(4), the application shall show the location and square footage of the Child Care Facility in addition to including sufficient information to establish that each requirement in Section 97.01(i) and/or Section 97.01(m)(4) has been met.

(3) An application for an Affordable Housing Benefit under this Section will not be

processed until all of the provisions of this section are complied with as determined by the Director and shall be processed concurrently with the application for the Qualified Housing Development project for which the Affordable Housing Benefit is sought.

Prior to the submittal of an application for a Qualified Housing Development, an applicant may submit to the Director a preliminary proposal for Affordable Housing Benefits. The Director shall, within 90 days of receipt of a written proposal, notify the applicant of the Director's preliminary response and schedule a meeting with the applicant to discuss the proposal and the Director's preliminary response.

Sec. 97.01(r). Determination on Density Bonus and Affordable Housing Incentive Program Requests

The decisionmaker on the underlying Qualified Housing Development application is authorized to approve or deny an application for an Affordable Housing Benefit in accordance with this Section.

(1) Affordable Housing Benefit Determinations. An application for an Affordable Housing Benefit shall be granted if the requirements of this Section are satisfied unless:

(a) The application is for an Incentive for which a finding is made in accordance with Section 97.01(n); or

(b) The underlying application for the Qualified Housing Development is not approved independent of and without consideration of the application for the Affordable Housing Benefit.

(2) Affordable Housing Benefit Compliance Provisions. To ensure compliance with this Section and state law, approval of an application for an Affordable Housing Benefit may be subject to, without limitation:

(a) The imposition of conditions of approval to the Qualified Housing Development, including imposition of fees necessary to monitor and enforce the provisions of this Section;

(b) An affordable housing agreement and, if applicable, an equity sharing agreement pursuant to Section 97.01(s); and

(c) Recorded deed restriction implementing conditions of approval and/or contractual or legally mandated provisions.

(3) Appeals

(a) If the decision to approve or deny an application for an Affordable Housing Benefit is made by the director, any person may appeal the decision. The appeal shall be in writing, state the grounds for appeal, and shall be filed with the City Clerk within 15 calendar days of the date of the mailing of the director's

decision, together with the appeal fee adopted by resolution of the City Council. The decision of the hearing officer shall be final.

(b) If the decision to approve or deny an application for an Affordable Housing Benefit is made by the Planning Commission, then an appeal may be filed to the City Council

(c) Notwithstanding subsections 1 and 2 of this subsection C, if the determination of the underlying application for the Qualified Housing Development is also appealed along with the decision of the Affordable Housing Benefit, then the entire project shall be controlled by the appeal procedures applicable to the underlying application.

Sec. 97.01(s). Affordable Housing Agreement and Equity Sharing Agreement

(1) General Requirements. No Density Bonus pursuant to Section 97.01(c) shall be granted unless and until the Affordable Housing Developer, or its designee approved in writing by the Director, enters into an affordable housing agreement and, if applicable, an equity sharing agreement, with the City or its designee pursuant to and in compliance with this section. (Gov. Code § 659 15(c)). The agreements shall be in the form provided by the City which shall contain terms and conditions mandated by, or necessary to implement, state law and this Article. The Director may designate a qualified administrator or entity to administer the provisions of this section on behalf of the City. The affordable housing agreement shall be recorded prior to, or concurrently with, final map recordation or, where the Qualified Housing Development does not include a map, prior to issuance of a building permit for any structure on the site. The Director is hereby authorized to enter into the agreements authorized by this section on behalf of the City upon approval of the agreements by City Attorney for legal form and sufficiency.

(2) Low or Very Low Income Minimum Affordable Housing Component or Senior Citizen Housing Development.

(a) The Affordable Housing Developer of a Qualified Housing Development based upon the inclusion of Low Income and/or Very Low Income Affordable Units must enter into an agreement with the City to maintain the continued affordability of the Affordable Units for 55 years, or a longer period if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, as follows (Gov. Code § 65915(c)(1)). The agreement shall establish specific compliance standards and specific remedies available to the City if such compliance standards are not met. The agreement shall among other things, specify the number of lower-income affordable units by number of bedrooms; standards for qualifying household incomes or other qualifying criteria, such as age; standards for maximum rents or sales prices; the person responsible for certifying tenant or owner incomes; procedures by which vacancies will be filled and units sold; required annual report and monitoring fees; restrictions imposed on lower-income affordable units on sale or transfer; and methods of enforcing such restrictions.

(b) Rental units. Rents for the Low Income and Very Low Income Affordable Units that qualified the Housing Development for the Density Bonus pursuant to Section 97.01(c) shall be set and maintained at an Affordable Rent. (Gov. Code § 659 15(c)(1)).

(c) For-Sale Units. Owner-occupied Low Income and Very Low Income Affordable Units that qualified the Housing Development for the Density Bonus pursuant to Section 97.01(c) shall be available at an Affordable Housing Cost. (Gov. Code § 65915(c)(1).) For-sale very low, low and moderate units shall not have a term of affordability but shall be subject to an equity sharing agreement that meets the requirements of Gov. Code § 65915(c)(2) unless the equity sharing agreement is in conflict with the requirements of another public funding source or law) (Gov. Code § 65915(c)(2)).

(d) To qualify as a senior unit, at least thirty-five (35) Senior Citizen Housing Development Units are maintained and available for rent or sale to senior citizens as defined in Civil Code Section 51.3.

(3) Moderate Income Minimum Affordable Housing Component.

(a) The Affordable Housing Developer of a Qualified Housing Development based upon the inclusion of Moderate Income Affordable Units in a Common Interest Development must enter into an agreement with the City ensuring that:

(1) The initial occupants of the Moderate Income Affordable Units that are directly related to the receipt of the Density Bonus are persons and families of a Moderate Income Household.

(2) The units are offered at an Affordable Housing Cost. (Gov. Code § 65915(c)(2)).

(b) The Affordable Housing Developer of Qualified Housing Development based upon a Moderate Income Minimum Affordable Component shall enter into an equity sharing agreement for a Common Interest Development with the City. (Gov. Code § 65915(c)(2)). The City shall enforce the equity sharing agreement unless it is in conflict with the requirements of another public funding source or law. (Gov. Code § 65915(c)(2)). The equity sharing agreement shall include at a minimum the following provisions:

(1) Upon resale, the seller of the unit shall retain the value of improvements, the down payment, and the seller's proportionate share of appreciation. The City 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 (5) years for any of the purposes described in Health and Safety Code Section 33334.2 (e) that promote home ownership. (Gov. Code § 65915(c)(2)(A)).

(2) The City's initial subsidy shall be equal to the fair market value of the unit at the time of initial sale minus the initial sale price to the Moderate Income Household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value. (Gov. Code § 65915(c)(2)(B)).

(3) The City's proportionate share of appreciation shall be equal to the ratio of the City's initial subsidy to the fair market value of the unit at the time of initial sale. (Gov. Code § 65915(c)(2)(C)).

(4) Minimum Affordable Housing Component and Child Care Facility. If an additional Density Bonus or Incentive is granted because a Child Care Facility is included in the Qualified Housing Development, the affordable housing agreement shall also include the Affordable Housing Developer's obligations pursuant to Section 97.01(i)(1)(c) for maintaining a Child Care Facility, if not otherwise addressed through conditions of approval.

Sec. 16-410T. Density Bonus or Incentive for Condominium Conversion Projects

(1) The City will grant either a density bonus or provide other incentives of equivalent financial value to a Condominium Conversion Project that agrees to pay the reasonably necessary administrative costs incurred by the City pursuant to this section if either:

(a) thirty-three percent (33%) of the Total Units of the proposed condominium project is affordable to persons and families of Moderate Income Households; or

(b) fifteen percent (15% of the Total units of the proposed condominium project will be affordable to persons and families of Low Income Households; and, in addition. (Gov. Code § 65915.5(a)).

(2) Definition of Density Bonus for Condominium Conversion Projects. If the requirements of Section 97.01(t)(1) are met, then the Condominium Conversion Project will be entitled to an increase in units of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion from apartments to condominiums. (Gov. Code § 65915.5(b)).

(3) Pre-Submittal Preliminary Proposals for Density Bonus or Incentive for Condominium Conversion Projects. Prior to the submittal of a formal request for subdivision map approval or other application for necessary discretionary approvals, an applicant to convert apartments to a condominium project may submit to the director a preliminary proposal for Density Bonus or Other Incentives of Equivalent Financial Value. The director shall, within 90 days of receipt of a written proposal, notify the applicant of the director's preliminary response and schedule a meeting with the applicant to discuss the proposal and the director's preliminary response. (Gov. Code § 659 15.5(d)).

(4) Application for Density Bonus or Incentives for Condominium Conversion Projects. An

applicant must submit a completed application provided by the City for a Density Bonus or for Other Incentives of Equivalent Financial Value. The application must be submitted concurrently with the application for the Condominium Conversion Project. The application must include the following:

(a) All information and documentation necessary to establish that the requirements of Section 97.01(t)(1) are met;

(b) The proposal for a Density Bonus or the proposal for Other Incentives of Equivalent Financial Value;

(c) Site plans demonstrating the location of the units to be converted, the Affordable Units, the Market-rate Units, and the Density Bonus units in the Condominium Conversion Project; and

(d) Any other information and documentation requested by the City to determine if the requirements of Section 97.01(t)(1) are met.

(5) Both the application for a Density Bonus or Other Incentives of Equivalent Financial Value and the application for the condominium conversion must be complete before the application for a Density Bonus or Other Incentives of Equivalent Financial Value will be considered.

(6) Granting Density Bonus or Incentive for Condominium Conversion Projects

(a) Approval

1) If the requirements of Section 97.01(t)(1) are met, the decision-making body for the Condominium Conversion Project application is authorized to grant an application for a Density Bonus or Other Incentives of Equivalent Financial Value, subject to Section 97.01(t)(6)(b).

2) Reasonable conditions may be placed on the granting of a Density Bonus or Other Incentives of Equivalent Financial Value that are found appropriate, including, but not limited to, entering into an affordable housing agreement pursuant to Section 97.01(s) which ensures continued affordability of units to subsequent purchasers who are persons and families of Moderate Income Households or Low Income Households. (Gov. Code § 659 15.5(a)).

(b) Ineligibility. An applicant shall be ineligible for a Density Bonus or Other Incentives of Equivalent Financial Value if the apartments proposed for conversion constitute a Qualified Housing Development for which a Density Bonus as defined in Section 97.01(b) or other Incentives were provided. (Gov. Code § 65915.5(f)).

(c) Decision on Condominium Conversion Project. Nothing in this section shall

be construed to require the City to approve a proposal to convert apartments to condominiums. (Gov. Code § 65915.5(e))

Sec. 97.01(u). Enforcement Provisions

(1) Occupancy. Prior to occupancy of an Affordable Unit, the household's eligibility for occupancy of the Affordable Unit must be demonstrated to the City. This provision applies throughout the restricted time periods pursuant to Section 97.01(s) and applies to any change in ownership or tenancy, including subletting, of the Affordable Unit.

(2) Ongoing Compliance. Upon request, the Affordable Housing Developer must show that the Affordable Units are continually in compliance with this Section and the terms of the Affordable Housing Agreement. Upon 30-day notice, the City may perform an audit to determine compliance with this Section and the terms of any agreement or restriction.

(3) Enforcement. The City has the authority to enforce the provisions of this Section, the terms of Affordable Housing Agreements and Equity Sharing Agreements, deed restrictions, covenants, resale restrictions, promissory notes, deed of trust, conditions of approval, permit conditions, and any other requirements placed on the Affordable Units or the approval of the Qualified Housing Development. In addition to the enforcement powers granted in this Section, the City may, at its discretion, take any other enforcement action permitted by law, including those authorized by City ordinances. Such enforcement actions may include, but are not limited to, a civil action for specific performance of the restrictions and agreement(s), damages for breach of contract, restitution, and injunctive relief. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from seeking any other remedy or relief to which it otherwise would be entitled under law or equity.

Sec. 97.01(v). Burden is On Applicant

When an applicant seeks a density bonus for a development or for donation of land, the applicant bears the burden of establishing that the Housing Development meets such requirements.

Part 3. Severability. If any provision(s) of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, even though any one or more sections, subsections, clauses, phrases, parts or portions thereof was declared invalid or unconstitutional.