



2.1

PLANNING AND BUILDING
DEPARTMENT

Planning Division

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 300
SACRAMENTO, CA
95814-2998

PLANNING
916-264-5381
FAX 916-264-5328

September 4, 2003

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: AN ORDINANCE AMENDING TABLE 17.24.020A OF SECTION 17.24.020 AND FOOTNOTE 30 OF SECTION 17.24.050 OF THE CITY CODE PERTAINING TO SECOND RESIDENTIAL UNITS. (M03-115)

LOCATION: Citywide

RECOMMENDATION: Staff recommends that the Law and Legislation Committee discuss the policy considerations associated with the proposed second residential unit ordinance amendment and forward their recommendations to the City Council.

CONTACT PERSON: Joy Patterson, Senior Planner, 264-5607
Lindsey Alagozian, Assistant Planner, 808-2659

FOR MEETING OF: September 16, 2003

SUMMARY: City staff is proposing an amendment to the Zoning Ordinance in order to ensure the city's zoning code is in compliance with a recently adopted State Law regarding the approval of second units. In response to the new state law, the proposed zoning ordinance amendment 1) provides for the ministerial approval of second residential units in all single and multifamily zones subject to development standards, 2) eliminates discretionary design review for second residential units provided design standards established by this ordinance are met, 3) establishes a discretionary process for review if certain standards are not met, and 4) requires compliance with Chapter 15.124 of the city's code for second residential units proposed on a parcel containing a landmark or contributing resource structure listed on the Sacramento Register.

COMMITTEE/COMMISSION ACTION: On July 10, 2003 the Planning Commission recommended approval and adoption of the zoning ordinance amendment to the City Council. On August 7, 2003 the Law and Legislation Committee reviewed the proposed second residential

unit ordinance amendment and raised concerns to staff. To address the concerns identified by the Law and Legislation Committee, staff has revised the ordinance amendment.

BACKGROUND INFORMATION:

Currently, the Zoning Ordinance provides a discretionary process for the review of second residential units in the Standard Single Family (R-1) zone. All second units require a Special Permit by either the Planning Commission or the Zoning Administrator depending upon the project's compliance with applicable development standards. The development standards require that second residential units: shall not exceed eight hundred fifty (850) square feet in size; comply with the height, lot coverage, and setback requirements of the R-1 zone; provide an additional parking space for the second residential unit outside the front and street sideyard setback areas; and comply with the main entrance requirement.

If the proposed second unit complies with the standards listed above, a Zoning Administrator Special Permit with a noticed public hearing is required. If the project deviates from any of the standards listed above, a Planning Commission Variance, a Planning Commission Special Permit, or a Zoning Administrator Special Permit is required depending on the type of deviation requested. In addition, all second units proposed in a Design Review district require staff level Design Review approval.

New State Law

In 2002, Assembly Bill 1866 was passed requiring local agencies to provide for the ministerial approval of secondary dwelling units on parcels with a primary single family residence. Effective July 1, 2003, second residential units generally must be approved ministerially, without a hearing. For jurisdictions that have an existing second residential unit ordinance, it is now necessary to put in place the amendments required to provide for the ministerial approval of second-residential units. The proposed zoning ordinance amendment is intended to bring the city's existing ordinance, which requires consistency with maximum floor area, setbacks, lot coverage, height, and parking regulations, into compliance with the new state law by providing for the ministerial approval of second residential units that meet established zoning regulations.

Proposed Zoning Ordinance Amendment

- **Single and Multifamily Zones (Proposed Ordinance Section 2)**

Currently, the city's Zoning Ordinance provides development standards for the discretionary review of second residential units in the Standard Single Family (R-1) zone only. The proposed zoning ordinance amendment would apply the provisions for the ministerial review of a second residential unit in all single and multifamily zones in the city (RE, R-1, R-1A, R-1B, R2, R-2A, R-2B, R-3, R-3A, R-4, R-5, RMX, RO) as required by the new law.

• **Development Standards and Design Criteria (Proposed Ordinance Section 3)**

Currently, the zoning code includes the following development standards for second residential units which are applied through the city's Special Permit process:

- the unit shall not exceed eight hundred fifty (850) square feet in size, the garage shall not be included in the total square footage;
- the unit shall comply with the height, lot coverage, and setback requirements of the R-1 zone;
- provide an additional parking space for the second residential unit outside the front and street sideyard setback areas (the parking space may be provided in an existing garage);
- and comply with the main entrance requirement.

The proposed zoning ordinance amendment eliminates the discretionary review of the Special Permit process and supplements the existing development standards as follows (italicized items indicate new or revised language):

1. *only one second residential unit is allowed per lot;*
2. the unit shall not exceed eight hundred fifty (850) square feet in size, the garage shall not be included in the total square footage;
3. *the lot on which the second residential unit is proposed shall contain one existing, permanent single family dwelling;*
4. *the unit shall comply with the height, lot coverage, and setback requirements of the zone or any applicable PUD Guidelines or Special Permit.*
5. provide an additional parking space for the second residential unit outside the front and street sideyard setback areas (the parking space may be provided in an existing garage);
6. comply with the main entrance requirement;
7. *the design, color, material, and texture of the roof shall be substantially the same as the primary dwelling unit;*
8. *the color, material, and texture of all building walls shall be similar to and compatible with the primary dwelling unit; and*
9. *the architectural style of the second residential unit shall be the same or similar to the primary dwelling unit, or if no architectural style can be identified, the design of the second residential unit shall be architecturally compatible with the primary dwelling unit, and shall maintain the scale and appearance of a single-family dwelling.*

The proposed ordinance amendment will allow the construction of a second residential unit without discretionary review provided the above development standards are met. If a proposed second residential unit does not comply development standards 3-6, a Zoning Administrator Special Permit will be required. If a proposed second residential unit does not comply with the design standards 7-9, then a discretionary Design Review application will be required.

Development standards 1-2 must be maintained for all second residential units and cannot be varied.

- **Design Review and Historical Resources (Proposed Ordinance Section 3)**

Based on the new state law requirements, no discretionary review may be required for second residential units even if the project is located in an established Design Review district. Currently, proposed second residential units located in a Design Review district (i.e, Oak Park, Del Paso Heights, etc.) require a Staff Level Design Review application. This process is a discretionary process, in which changes can be made to the proposed design in an attempt to provide design compatibility with the primary unit and the surrounding properties.

In order to bring our requirements into compliance with the new state law, the proposed ordinance amendment eliminates the discretionary design review process and incorporates the necessary design consistency requirements into the required development standards. If the second residential unit deviates from the previously approved design standards, the ordinance provides for a discretionary Design Review process. However, if a proposed second residential unit is to be constructed on a parcel containing a landmark or contributing resource structure listed on the Sacramento Register, compliance with the city's Preservation ordinance is required.

- **Appeals (Proposed Ordinance Section 3)**

The proposed ordinance amendment also provides an appeal process for an applicant who may disagree with the interpretation of the development standards applicable to second residential units. Should an applicant disagree with the interpretation made by staff, the decision can be appealed in written form to the Planning Director. The Planning Director shall review the request and render a decision without a public hearing. The Planning Director's decision shall be final.

FINANCIAL CONSIDERATIONS:

This report has no fiscal implications.

ENVIRONMENTAL CONSIDERATIONS:

The proposed project is exempt from environmental review pursuant to State EIR Guidelines (CEQA Section 15061). The proposed amendment is covered by the general rule that CEQA only applies to projects, which have the potential for causing a significant effect on the environment. The proposed amendment is exempt from CEQA because proposed second dwelling units on parcels with an existing dwelling unit are exempt from further environmental review.

POLICY CONSIDERATIONS:

The proposed amendment will bring the city's zoning ordinance into compliance with the recently adopted state law which requires the ministerial approval of second residential units.


E/SBD CONSIDERATIONS:

No goods or services are being purchased under this report.

Respectfully submitted,


GARY L. STONEHOUSE
Planning Director

RECOMMENDATION APPROVED:


ROBERT P. THOMAS
City Manager
by Ken Nishimoto
Deputy City Manager

Attachments

- Attachment A: Ordinance amending Title 17 of the Sacramento City Code Relating to the Approval of Second Residential Units. (Pages 6-11)
- Attachment B: Zoning Ordinance Amendment Showing Changes (Pages 12-18)
- Attachment C: State Law AB 1866 Regarding Second Residential Units (Pages 19-33)

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**AN ORDINANCE AMENDING TABLE
17.24.020A OF SECTION 17.24.020 AND
FOOTNOTE 30 OF SECTION 17.24.050 OF
THE CITY CODE PERTAINING TO SECOND
RESIDENTIAL UNITS. (M03-115)**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

Section 1: FINDINGS

The City Council finds and declares that:

A. The State Legislature has declared that second residential units provide a valuable form of housing for family members, students, senior citizens, in-home health care providers, the disabled, and others at below market prices within existing neighborhoods.

B. The Legislature has stated its intent that any second-unit ordinance adopted by local agencies have the effect of providing for the creation of second units, and that locally adopted development standards addressing matters such as unit size, parking, height, setbacks, and other requirements not be so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create the second units in zones in which they are authorized by local ordinance.

C. The Legislature restated its commitment to second units as a valuable form of housing in 2002 with the passage of Assembly Bill 1866, which amends Government

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Code section 65852.2 by eliminating the authority of local agencies to require any discretionary review of second units and mandating ministerial approval of these units.

D. Government Code section 65852.2 allows the City to designate areas within the City where second units may be permitted; provided, that the City may not preclude second units within single-family and multifamily zones unless it makes findings (1) acknowledging that the restriction may limit housing opportunities in the region and (2) identifying specific adverse impacts on the public health, safety, and welfare that would result from allowing second units in the areas subject to the restriction.

E. The City Council wishes to permit second units subject to ministerial approval in all single-family and multifamily zones of the City, subject to the standards established in this ordinance, but excluding landmark and contributing resource structures subject to Chapter 15.124 Historic Preservation, as addressed immediately below.

F. The City Council has enacted Chapter 15.124 of the Sacramento City Code entitled Historic Preservation in recognition of the City's rich history and the need to recognize and preserve significant aspects of that history. The City Council has found that:

(1) preservation of historic resources is important to promote the public health, safety, and the economic and general welfare of the people of the City;

(2) well-preserved and retained historic resources are essential to maintain and revitalize the City and its neighborhoods and stimulate economic activity, and the preservation and continued use of historic resources are effective tools to sustain and revitalize neighborhoods and business districts within the City;

(3) the City's historic structures, sites, and other resources are irreplaceable and need to be protected from deterioration, inappropriate alterations, demolition, and archeological site damage; and

(4) preservation of the City's historic resources enhances the City's economic, cultural, and aesthetic standing, its identity, and its livability, marketability, and urban character.

G. Under Chapter 15.124, the City has established a historic preservation program that regulates, by means of a hearing and discretionary approval process, the issuance of permits and entitlements involving historic resources. The permits and entitlements subject to regulation include building permits for new construction and exterior alterations. The regulation is intended to achieve the purpose of the historic

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preservation program by preserving and enhancing the nature and integrity of historic resources and districts.

H. Allowing the construction of second units on properties containing landmark and contributing resource structures subject to Chapter 15.124 without the hearing and discretionary approval requirements contained in Chapter 15.124 would adversely impact the public health, safety, and welfare by potentially compromising the integrity of the historic preservation program and degrading the historic value of the protected structures. The City Council, therefore, has determined to allow second units on single-family and multifamily lots containing landmark and contributing resource structures subject to Chapter 15.124, but only upon compliance with the Chapter's hearing and discretionary review requirements. The City Council acknowledges that restricting second units in this way may limit housing opportunities in the region; however, given the limited geographic area of the City's historic districts, the impact on housing opportunities will be minimal.

Section 2:

A. Table 17.24.020A of Section 17.24.020 of the Sacramento city Code is amended to read as set forth below for the "Second residential unit":

USE	RE	R1	R1A	R1B	R2	R2A	R2B	R3	R3A	R4	R5	RMX	RO	OB
Second residential unit*	30	30	30	30	30	30	30	30	30	30	30	30	30	

B. Except as specifically amended by paragraph "a" above for the use specified, the provisions of Table 17.24.020A shall remain unchanged and in full force and effect.

Section 3:

Footnote 30 of Section 17.24.050 of the Sacramento City Code (the Zoning Code) is amended to read as follows:

- 30. Second Residential Unit. A second residential unit shall be permitted in each of the residential zones as indicated in Table 17.24.020A subject to the development standards and requirements stated in subsection a., below. These development standards and requirements are mandatory. Review for consistency with these development standards and requirements shall be ministerial and nondiscretionary.

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a. Development Standards.

i. The lot on which the second residential unit is proposed shall contain one existing, permanent single-family dwelling;

ii. Only one second residential unit is allowed per lot.

iii. The area of the proposed second residential unit, shall not exceed eight hundred fifty (850) square feet. If a garage is provided for the second residential unit, it shall not be included in the square footage calculation.

iv. The height, lot coverage, and setback requirements that are contained in this Title, in a PUD Schematic Plan and/or Guidelines, in conditions of approval of an existing special permit, or that are otherwise established for and apply to the lot on which the second unit is proposed shall apply to development and use of the proposed second residential unit. This subsection a.iv. shall not be construed or applied to subject the application for a second residential unit to discretionary review and hearing.

v. At least one off-street parking space shall be provided for the second residential unit, which shall be outside of the front and street side yard setback areas. The parking space may be provided in an existing or proposed garage.

vi. The main entrance of the second residential unit shall face the front or street side of the lot; except, within the Central City and the Alhambra Corridor SPD, a second residential unit may have its main entrance face the rear yard area if the rear yard abuts an alley.

vii. The second residential unit shall conform to the following design standards:

(a) The design, color, material, and texture of the roof shall be substantially the same as the primary dwelling unit;

(b) The color, material, and texture of all building walls shall be similar to and compatible with the primary dwelling unit; and

(c) The architectural style of the second residential unit shall be the same or similar to the primary dwelling unit, or if no architectural style can be identified, the design of the second residential unit shall be architecturally compatible with the primary dwelling unit, and shall maintain the scale and appearance of a single-family dwelling.

viii. A second residential unit proposed for any lot that includes a landmark or a contributing resource structure subject to review and approval by the Design Review and Preservation Board or the preservation director under Chapter 15.124 of this Code also shall be subject to the provisions of Chapter 15.124.

ix. A second residential unit proposed for any lot that is located in a special planning district, design review district, PUD, or subject to an

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overlay zone that requires discretionary design or plan review shall be exempt from that discretionary review.

b. Procedure to Vary Requirements. Zoning Administrator's Authority to Vary Requirements. The zoning administrator shall have the authority to vary one or more of the requirements in subsections a.i., a.iv., a.v., and a.vi of this section in accordance with and subject to the requirements of Chapter 17.212.

ii. Planning Director's Authority to Vary Design Requirements. The planning director shall have the authority to review and vary the design standards in subsection a.vii. of this section in accordance with and subject to the requirements of Chapter 17.132.

Appeals. An applicant for a second residential unit who disagrees with an interpretation and application of the development standards and requirements in subsection a., above, may request a review of that interpretation by the planning director by filing a written request for review with the planning director. Upon receipt of the request, the planning director shall review the matter and render his or her decision on the request within a reasonable time. No hearing shall be held, and the decision of the planning director shall be final.

Section 4. SEVERABILITY:

The City Council of the City of Sacramento declares that should any section, paragraph, sentence, or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this ordinance, independent of the provision declared invalid.

PASSED FOR PUBLICATION:

PASSED:

EFFECTIVE:

MAYOR

ATTEST:

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M03-115

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B. The Legislature has stated its intent that any second-unit ordinance adopted by local agencies have the effect of providing for the creation of second units, and that locally adopted development standards addressing matters such as unit size, parking, height, setbacks, and other requirements not be so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create the second units in zones in which they are authorized by local ordinance.

C. The Legislature restated its commitment to second units as a valuable form of housing in 2002 with the passage of Assembly Bill 1866, which amends Government

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Code section 65852.2 by eliminating the authority of local agencies to require any discretionary review of second units and mandating ministerial approval of these units.

D. Government Code section 65852.2 allows the City to designate areas within the City where second units may be permitted; provided, that the City may not preclude second units within single-family and multifamily zones unless it makes findings (1) acknowledging that the restriction may limit housing opportunities in the region and (2) identifying specific adverse impacts on the public health, safety, and welfare that would result from allowing second units in the areas subject to the restriction.

E. The City Council wishes to permit second units subject to ministerial approval in all single-family and multifamily zones of the City, subject to the standards established in this ordinance, but excluding landmark and contributing resource structures subject to Chapter 15.124 Historic Preservation, as addressed immediately below.

F. The City Council has enacted Chapter 15.124 of the Sacramento City Code entitled Historic Preservation in recognition of the City's rich history and the need to recognize and preserve significant aspects of that history. The City Council has found that:

(1) preservation of historic resources is important to promote the public health, safety, and the economic and general welfare of the people of the City;

(2) well-preserved and retained historic resources are essential to maintain and revitalize the City and its neighborhoods and stimulate economic activity, and the preservation and continued use of historic resources are effective tools to sustain and revitalize neighborhoods and business districts within the City;

(3) the City's historic structures, sites, and other resources are irreplaceable and need to be protected from deterioration, inappropriate alterations, demolition, and archeological site damage; and

(4) preservation of the City's historic resources enhances the City's economic, cultural, and aesthetic standing, its identity, and its livability, marketability, and urban character.

G. Under Chapter 15.124, the City has established a historic preservation program that regulates, by means of a hearing and discretionary approval process, the issuance of permits and entitlements involving historic resources. The permits and entitlements subject to regulation include building permits for new construction and exterior alterations. The regulation is intended to achieve the purpose of the historic

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preservation program by preserving and enhancing the nature and integrity of historic resources and districts.

H. Allowing the construction of second units on properties containing landmark and contributing resource structures subject to Chapter 15.124 without the hearing and discretionary approval requirements contained in Chapter 15.124 would adversely impact the public health, safety, and welfare by potentially compromising the integrity of the historic preservation program and degrading the historic value of the protected structures. The City Council, therefore, has determined to allow second units on single-family and multifamily lots containing landmark and contributing resource structures subject to Chapter 15.124, but only upon compliance with the Chapter's hearing and discretionary review requirements. The City Council acknowledges that restricting second units in this way may limit housing opportunities in the region; however, given the limited geographic area of the City's historic districts, the impact on housing opportunities will be minimal.

Section 2:

A. Table 17.24.020A of Section 17.24.020 of the Sacramento city Code is amended to read as set forth below for the "Second residential unit":

USE	RE	R1	R1A	R1B	R2	R2A	R2B	R3	R3A	R4	R5	RMX	RO	OB
Second residential unit*	30	30	30	30	30	30	30	30	30	30	30	30	30	

B. Except as specifically amended by paragraph "a" above for the use specified, the provisions of Table 17.24.020A shall remain unchanged and in full force and effect.

Section 3:

Footnote 30 of Section 17.24.050 of the Sacramento City Code (the Zoning Code) is amended to read as follows:

- 30. ~~Second Residential Unit. Subject to approval of a special permit by the zoning administrator or planning commission, as specified below A, an attached or detached second residential unit shall be permitted in each of the residential zones as indicated in Table 17.24.020A subject to on a parcel zoned R-1; provided that no second residential unit shall be allowed on any corner lot developed with a duplex or halfplex. Second residential units shall comply with~~

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~~the development standards and requirements stated set forth in subsection (30)(a) of this section below, except as provided in subsection (30)(b) of this section. In granting the special permit, the zoning administrator or planning commission must make the findings set forth in subsection (30)(c) of this section. The zoning administrator shall have the authority to approve a special permit if the development standards set forth in subsection (30)(a) of this section are satisfied; or if the zoning administrator is authorized to approve the required variance(s) from development standards pursuant to subsection (30)(b) of this section. All other special permits for second residential units shall require planning commission approval. These development standards and requirements are mandatory. Review for consistency with these development standards and requirements shall be ministerial and nondiscretionary.~~

a. Development Standards.

~~i. The area of lot on which the second residential unit shall not exceed eight hundred fifty (850) square feet. (A garage, if provided, is not included in the square footage calculation.) is proposed shall contain one existing, permanent single-family dwelling;~~

~~ii. The Only one second residential unit shall comply with the height, lot coverage, and setback requirements of this title. is allowed per lot.~~

~~iii. At least one parking space shall be provided for The area of the proposed second residential unit, which shall not exceed eight hundred fifty (850) square feet. If a garage is be outside of the front and street sideyard setback areas. The parking space may be provided in an existing or proposed garage. for the second residential unit, it shall not be included in the square footage calculation.~~

~~iv. The height, lot coverage, and setback requirements that are contained in this Title, in a PUD Schematic Plan and/or Guidelines, in conditions of approval of an existing special permit, or that are otherwise established for and apply to the lot on which the second unit is proposed shall apply to development and use of the proposed main entrance of a second residential unit; shall face the front or street side of the lot. Within the central city or the Alhambra Corridor SPD, a dwelling unit may have its main entrance from the rear yard area if the rear yard abuts an alley. This subsection a.iv. shall not be construed or applied to subject the application for a second residential unit to discretionary review and hearing.~~

~~v. At least one off-street parking space shall be provided for the second residential unit, which shall be outside of the front and street side yard setback areas. The parking space may be provided in an existing or proposed garage.~~

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vi. The main entrance of the second residential unit shall face the front or street side of the lot; except, within the Central City and the Alhambra Corridor SPD, a second residential unit may have its main entrance face the rear yard area if the rear yard abuts an alley.

vii. The second residential unit shall conform to the following design standards:

(a) The design, color, material, and texture of the roof shall be substantially the same as the primary dwelling unit;

(b) The color, material, and texture of all building walls shall be similar to and compatible with the primary dwelling unit; and

(c) The architectural style of the second residential unit shall be the same or similar to the primary dwelling unit, or if no architectural style can be identified, the design of the second residential unit shall be architecturally compatible with the primary dwelling unit, and shall maintain the scale and appearance of a single-family dwelling.

viii. A second residential unit proposed for any lot that includes a landmark or a contributing resource structure subject to review and approval by the Design Review and Preservation Board or the preservation director under Chapter 15.124 of this Code also shall be subject to the provisions of Chapter 15.124.

ix. A second residential unit proposed for any lot that is located in a special planning district, design review district, PUD, or subject to an overlay zone that requires discretionary design or plan review shall be exempt from that discretionary review.

b. ~~Exceptions. Procedure to Vary Requirements. The zoning administrator or planning commission may approve a second residential unit which deviates from the development standards specified in subsection (30)(a) of this section pursuant to the following provisions:~~

~~i. To waive requirements in subsection (30)(a)(i) of this section, a planning commission variance pursuant to Chapter 17.216 of this title is required. Zoning Administrator's Authority to Vary Requirements. The zoning administrator shall have the authority to vary one or more of the requirements in subsections a.i., a.iv., a.v., and a.vi of this section in accordance with and subject to the requirements of Chapter 17.212.~~

~~ii. To waive requirements in subsection (30)(a)(ii) of this section for an existing structure requires a zoning administrator's special permit pursuant to Chapter 17.212 of this title prior to the issuance of a building permit. (A variance to waive these requirements is not required.) Planning Director's Authority to Vary Design Requirements. The planning director shall have the authority to review and vary the design standards in subsection a.vii.~~

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DATE ADOPTED: _____

of this section in accordance with and subject to the requirements of Chapter 17.132.

~~iii. To waive requirements in subsection (30)(a)(ii) of this section for new construction, including new construction attached to or above an existing structure, requires a planning commission special permit pursuant to Chapter 17.212 of this title prior to the issuance of a building permit. (A variance to waive these requirements is not required.)~~

~~iv. To waive requirements in subsection (30)(a)(iii) of this section requires a zoning administrator's special permit pursuant to Chapter 17.212 of this title prior to issuance of a building permit. (A variance to waive these requirements is not required.)~~

~~c. Findings. In granting a special permit for a second residential unit, the zoning administrator or planning commission must find, in addition to the findings required by Section 17.212.010 of this title, that the architecture of the second unit is compatible with the architecture of the main residential unit. Appeals. An applicant for a second residential unit who disagrees with an interpretation and application of the development standards and requirements in subsection a., above, may request a review of that interpretation by the planning director by filing a written request for review with the planning director. Upon receipt of the request, the planning director shall review the matter and render his or her decision on the request within a reasonable time. No hearing shall be held, and the decision of the planning director shall be final.~~

Section 4. SEVERABILITY:

The City Council of the City of Sacramento declares that should any section, paragraph, sentence, or word of this ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this ordinance, independent of the provision declared invalid.

PASSED FOR PUBLICATION: _____

PASSED: _____

EFFECTIVE: _____

MAYOR

FOR CITY CLERK USE ONLY

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DATE ADOPTED: _____

ATTEST:

CITY CLERK

M03-115

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ORDINANCE NO. _____

DATE ADOPTED: _____

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BILL NUMBER: AB 1866 CHAPTERED
BILL TEXT

CHAPTER 1062
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2002
APPROVED BY GOVERNOR SEPTEMBER 29, 2002
PASSED THE ASSEMBLY AUGUST 29, 2002
PASSED THE SENATE AUGUST 27, 2002
AMENDED IN SENATE AUGUST 22, 2002
AMENDED IN SENATE AUGUST 5, 2002
AMENDED IN SENATE JUNE 19, 2002
AMENDED IN ASSEMBLY MAY 23, 2002
AMENDED IN ASSEMBLY MAY 14, 2002
AMENDED IN ASSEMBLY APRIL 22, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

INTRODUCED BY Assembly Member Wright

JANUARY 31, 2002

An act to amend Sections 65583.1, 65852.2, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1866, Wright. Housing: density bonuses.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city or county, among other things, to identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and to make adequate provision for the existing and projected needs of all economic segments of the community. That law permits the Department of Housing and Community Development to allow a city or county to identify adequate sites by a variety of methods.

This bill would authorize the department to also allow a city or county to identify sites for 2nd units based upon relevant factors, including the number of 2nd units developed in the prior housing element planning period.

(2) The Planning and Zoning Law authorizes a local agency to provide by ordinance for the creation of 2nd units on parcels zoned for a primary single-family and multifamily residence, as prescribed.

This bill would require, when a local agency receives its first application on or after July 1, 2003, that the application shall be considered ministerially without discretionary review or hearing,

notwithstanding other laws that regulate the issuance of variances or special use permits.

The bill would authorize a local agency to charge a fee to reimburse the agency for costs it incurs as a result of these provisions.

(3) The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with incentives or concessions for the production of lower income housing units within the development if the developer meets specified requirements. Existing law requires the local government to establish procedures for carrying out these provisions.

This bill would revise those provisions to refer to an applicant who proposes a housing development and would recast them to, among other things, revise criteria for making written findings that a concession or incentive is not required, add criteria for continued affordability of housing in a condominium project, authorize an applicant to request a meeting on its proposal for a specific density bonus, incentive, or concession or for the waiver or reduction of development standards, and exempt developments meeting certain affordability criteria from specified laws. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

The bill would also authorize an applicant to initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession in violation of these provisions, and would require the court to award the plaintiff reasonable attorney's fees and costs of suit. It would authorize a local agency to charge a fee to reimburse it for costs that it incurs as a result of these provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of

methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount

of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a

net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density-bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the

unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall

adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use

permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling.

No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued

pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area," means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Second unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) 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), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (j), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty 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.

(2) Ten 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.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional 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).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units 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. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

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

(1) 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).

(2) The concession or incentive would have a specific adverse

impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources 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.

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

an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

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

no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. 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. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a "density bonus" of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. 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. The density bonus shall not be included when determining the number of housing units which is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned-development of a city, county, or city and county. For the purposes of this section, "housing development" also includes either

(1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(i) 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.

(j) 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.

(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 and actual cost reductions.

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

(k) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

(l) 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).

(m) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001-02 Regular Session of the Legislature.

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

(1) "Development standard" means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.