

SUBJECT: ZONE TEXT AMENDMENT TO REVISE THE AFFORDABLE HOUSING REQUIREMENTS AND INCENTIVES REGULATIONS TO CONFORM WITH STATE LAW

INITIATED BY: CITY STAFF

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## STATEMENT ON THE SUBJECT

The Planning Commission will consider a request for a zone text amendment (ZTA) to Chapter 19.22, Affordable Housing Requirements and Incentives and Section 19.90.020 Definitions of Specialized Terms and Phrases of the West Hollywood Municipal Code to adopt revised regulations for affordable housing in response to changes in state law.

## RECOMMENDATION

Staff recommends that the Planning Commission hold the public hearing, consider all pertinent testimony, and recommend approval to the City Council by adopting the following:

- 1) Draft Resolution No. PC 18-1242: **“A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONE TEXT AMENDMENT TO AMEND CHAPTER 19.22 (AFFORDABLE HOUSING REQUIREMENTS AND INCENTIVES) AND SECTION §19.90.020 (DEFINITIONS OF SPECIALIZED TERMS AND PHRASES) OF CHAPTER 19.20 OF TITLE 19 OF THE WEST HOLLYWOOD MUNICIPAL CODE TO ADOPT NEW POLICIES REGULATING AFFORDABLE HOUSING IN ACCORDANCE WITH STATE LAW, WITHIN THE CITY OF WEST HOLLYWOOD, CALIFORNIA.”**  
(ATTACHMENT A)

## BACKGROUND/ANALYSIS

The State density bonus law was enacted in 1979, to encourage cities to offer density bonuses, incentives, and waivers to housing developments that include certain percentages of affordable units. Pursuant to this state law, the City of West Hollywood adopted an Inclusionary Housing Ordinance in 1986 that has been amended several times since then, with the latest amendment in 2014. Since adoption of the inclusionary onsite

affordable housing requirement 322 deed-restricted affordable housing units have been produced in market-rate buildings throughout the City.

In 2016 and 2017, Governor Brown signed the following new legislation related to incentivizing the construction of affordable and market rate housing throughout California:

- Assembly Bill 2442 (Holden) – Allows a density bonus for development projects with transitional age (foster) youth, disabled veteran, and homeless person units.
- Assembly Bill 2501 (Bloom) – Requires cities to implement procedures and timelines for processing density bonus applications.
- Assembly Bill 2556 (Nazarian) – Includes additional provisions for replacement of demolished affordable units as required by AB 2222.
- Assembly Bill 1934 (Santiago) – Allows commercial developers to partner with affordable housing developers whereby both would be eligible to receive certain incentives and concessions for their development projects.
- Assembly Bill 1505 (Bloom) – Allows jurisdictions to require new residential rental projects to reserve a percentage of the units for very low, low, or moderate income persons or families.

These new state laws and proposed revisions to the City's inclusionary housing regulations are analyzed below. Additional proposed amendments to the City's density bonus regulations, such as reduced parking requirements and the inclusion of key definitions, are also analyzed below.

#### Assembly Bill 2442 (Holden)

This bill requires that a density bonus of 20 percent be provided to a developer that proposes to construct a housing development that includes at least 10 percent of the total housing units for transitional age youth, disabled veterans, or homeless persons. It further requires that these units be subject to a recorded affordability restriction of at least 55 years and be provided the same affordability level as very low income units.

In accordance with this bill, Municipal Code Section 19.22.010(A) Purpose, has been revised to state that these provisions are intended to encourage housing for transitional age youth, disabled veterans, and homeless persons as follows:

A. This chapter provides requirements and incentives for the development of affordable housing units in conjunction with other residential and mixed use projects, and commercial projects in partnership with affordable housing providers as provided under state law. These provisions are intended to implement General Plan policies encouraging the production of affordable housing for all economic groups ~~low and moderate income housing~~, and housing for disabled and older residents, transitional age youth, disabled veterans, and homeless persons as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.) all of which is integrated, compatible with and complements adjacent uses, and is located near public and commercial services.

Municipal Code Section 19.22.050(A) is proposed to be amended to add language stating that the basis for a density bonus is to encourage construction of affordable housing for very low, low and moderate income persons as well as transitional age youth, disabled veterans, and homeless persons as follows:

A. *Basis for Bonus.* In order to encourage the construction of housing affordable to very low, low, and moderate income persons, transitional age youth, disabled veterans, and homeless persons, and the replacement of residential rental units lost through new construction, density bonuses shall be allowed in compliance with this section.

Municipal Code Section 199.22.050(D)(1) is proposed to be amended to allow a density bonus for housing developments that include a minimum 10 percent of their units for transitional age youth, disabled veterans, or homeless persons in conformance with state law. This is the same incentive allowed for the construction of lower income units in the City.

1. Density Bonuses Permitted. The amount of density bonus granted shall be based on the following table:

Affordable Unit Type	Minimum % of Affordable Units	Density Bonus Granted	Additional Bonus for each 1% Increase in Affordable Units
Very Low Income	5%	20%	2.5%
Lower Income	10%	20%	1.5%
Moderate Income	10%	5%	1%
<u>Very low income units for transitional age youth, disabled veterans, or homeless persons, as those terms are defined in Government Code Section 65915</u>	<u>10%</u>	<u>20%</u>	<u>N/A</u>

Assembly Bill 2501 (Bloom)

AB 2501 requires that local jurisdictions have proper procedures and timelines in place for expeditious processing of applications for multi-unit residential projects and commercial projects (partnered with affordable housing developers) that are requesting density bonuses. The bill includes the following provisions:

- Adopting procedures and timelines for processing density bonus applications
- Providing applicants with a list of documents and information required for a density bonus application to be deemed complete
- Notifying applicants when applications are deemed complete consistent with the Permit Streamlining Act

- Require only “reasonable” documentation to establish eligibility for a requested density bonus
- Each component of any density bonus calculation must be rounded up
- Prohibit local government from requiring additional reports or studies to be prepared as a condition of an application
- Redefines housing development to include mixed-use housing.

Newly proposed Section 19.22.025 Processing Density Bonus Applications, has been included in the draft ordinance to address various provisions of AB 2501 and to clarify that applications for a density bonus and/or incentives shall be processed concurrently with the underlying land use permit and reviewed by the same review authority (i.e. Planning Commission or City Council). The proposed provisions in new Section 19.22.025 are as follows:

A. The application for a density bonus and/or concessions shall be processed concurrently with the underlying land use permit and entitlement application and in accordance with the procedures set forth in Section 19.40.040. In addition to any other applicable application requirements, the application shall be made on a form supplied by the Community Development Department and shall include:

- i. A density bonus proposal that includes a description of the unit counts that make the project eligible for the requested density bonus;
- ii. A proposal for the specific concessions that the applicant requests. For “other regulatory concessions” under 19.22.050.E.2.f, the applicant shall provide an explanation of the regulatory concession and how it result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the targeted units to be set as specified in Government Code Section 65915. The intent of this requirement is to provide reasonable documentation to establish eligibility for the concession or to demonstrate that the concession meets the definition set forth in Section 65915. The explanation may be, but is not required to be, in narrative form;
- iii. A proposal for any requested waiver or reduction of the development standard if compliance with a development standard would physically preclude construction of the project as proposed. The proposal may include an explanation of how development standard would physically preclude construction of the project as proposed; and
- iv. A proposal for any requested reduction in parking ratios under 19.22.050.F and an explanation for how the project is eligible for the requested reduction.

B. Review Authority. A request for density bonus or incentive shall be reviewed concurrently with and by the same review authority as the underlying application for land use permits and entitlements as set forth in Section 19.40.020.

C. Application for Density Bonus Housing Agreement. Once the land use permits, entitlements and any density bonus have been approved as described above, the applicant shall file an application, including the payment of any processing fees with the Housing Division for approval and finalization of the Agreement Imposing Restrictions on Real Property (Density Bonus Housing Agreement).

To further address the requirements of AB 2501, upon adoption of the proposed zone text amendments, density bonus application guidelines for developers and the public will be prepared. The guidelines will include required application submittal documents and studies, processing procedures, applicant notification milestones, and timelines for multi-unit residential projects that apply for a density bonus and commercial projects that are partnered with affordable housing developers. These guidelines will be available on the City's website as well as the Rent Stabilization & Housing Division and Planning Division public counters at City Hall.

AB 2501 also requires that each component of any density bonus related calculation be rounded up. The ZTA includes the following language in Section 19.22.050(D)(3)(c) to implement this requirement:

c. Any density calculation, including base density and bonus density that results in a fractional number shall be rounded up to the next whole number.

As stated above, this bill also redefines housing development to include "mixed-use housing." To ensure that this is clear, the terms "mixed-use" and "mixed commercial/residential development" have been added where appropriate throughout the draft ordinance.

#### Assembly Bill 2556 (Nazarian)

In 2014, the Legislature passed AB 2222, to ensure that housing units occupied by lower-income persons or households were not being eliminated and replaced with density bonus projects that yielded fewer net affordable units. Questions remained regarding how this provision would be implemented. Therefore, in 2016, the Legislature adopted AB 2556 that provides further guidance regarding rent-controlled affordable units by giving jurisdictions the right to require either:

- Replacement of rental units subject to a recorded affordability restriction for at least 55 years, or
- Replacement with units that remain subject to the local rent control ordinance.

AB 2556 also addresses the definition of "equivalent size" for replacement units, and requires that the replacement units must contain at least the same total number of bedrooms as the units being replaced.

An example of how this requirement would be implemented is as follows: if a 10 unit building, which has 2 units with rental rate restrictions for to low income persons or families is proposed to be demolished and replaced by a 20 unit residential project, the new project must include at least 2 replacement low income rent restricted units as well as any other affordable units required by Chapter 19.22. The 2 replacement affordable units must also have the same number of bedrooms as those in the demolished project to meet the equivalent size requirement

To ensure that residential projects with affordable units that are demolished to create new housing are replaced in accordance with state law Section 19.22.050(B)(4), has been revised to include the following provisions for requiring the replacement of affordable units of equivalent size:

*B. Limitation on Use of Bonus.* A density bonus shall not be:

4. Used in conjunction with a project that An applicant shall be ineligible for a density bonus if they vacates or demolishes (1) rental units subject to Title 17 of this Code; (2) units subject to affordability restrictions that restrict rents to levels affordable to persons or families of lower or very low income; or (3) units otherwise occupied by lower or low income households within the five year period preceding the development application unless those units are replaced in accordance with Government Code Section 65915(c)(3) and provisions below.

a. "Replace" shall mean the following:

i. If any dwelling units described in subsection B.4 above are occupied on the date of application, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.

ii. For unoccupied dwelling units described in subsection B.4 above in a development with occupied units, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy.

iii. If any dwelling units described in subsection B.4 above have been vacated or demolished within the five-year period preceding the application, the proposed project shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.

iv. For any dwelling units described in subsection B.4 above that is or was within the five-year period preceding the application (1) subject to Title 17 of this Code, and (2) is or was occupied by persons or families above lower income, those units shall be replaced with units that are subject to Title 17 of this Code, in accordance with Section 17.24.010.a.4.i.

v. If the income category of the last household in occupancy, or of the persons or families in occupancy at the highpoint, is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. Rebuttably presumed means that it is presumed to be true unless evidence is presented to prove otherwise, as determined by the Director of Human Services and Rent Stabilization.

b. Except as provided in subsection 4.a.iv above, the replacement units shall be made available at affordable rent or affordable housing cost to, and occupied by,

persons or families in the same or lower income category as the occupancy that determines the replacement requirement herein.

c. The affordable replacement units shall be subject to a recorded affordability restriction and Section 19.22.090.

d. The affordable replacement units shall be counted towards the affordable units provided for purposes of calculating the density bonus in subsection D below and the inclusionary requirements in 19.22.030.

e. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

f. "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

### Assembly Bill 1934 (Santiago)

AB 1934, allows commercial developers to partner with affordable housing developers whereby both would be eligible to receive bonuses, concessions, and waivers for qualifying projects. In order to qualify for a development bonus, a commercial developer would need to partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.

This bill states that the housing can be constructed on the site of the commercial development (mixed-use development) or on a separate site that meets the following requirements:

- Within the boundaries of the local government where the project is proposed
- In proximity to public amenities including schools and employment centers
- Located within one-half mile of a major transit stop (all residential and commercial areas in West Hollywood are in one-half mile of a major transit stop)

Under this new state law, commercial development concessions would be available to commercial developments that include affordable housing units (mixed-use development) or partner with an affordable housing developer. The following revisions to several sections of the Municipal Code are proposed in response to this bill:

Section 19.22.020(B)(3) Applicability, has been revised as follows:

B. *Exemptions.* The provisions of this chapter shall not be applicable to the following:

3. Commercial development project, except as may be applicable to obtain development bonuses under California Government Code Section 65915.7, where the developer of a commercial project has entered into an agreement for partnered housing with an affordable housing developer that contributes to affordable housing through a joint project or two separate projects encompassing affordable housing.

Section 19.22.050(Preamble), (E), and (G) Affordable Housing Incentives. These sections have been revised to include the following language relative to concessions allowed by AB 1934, for commercial development:

Preamble: This section provides density bonuses for specified housing projects and commercial projects that are affiliated with onsite or offsite affordable housing projects as set forth in 19.22.020.B.3. The provided affordable units qualifying a project for a bonus shall be made permanently affordable to and reserved for households at the income levels qualifying the project for the bonus.

E. Concessions. In compliance with state law, projects that request a density bonus to provide on-site affordable housing (and commercial projects that partner with affordable housing developers and provide at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low income households authorized by Government Code 65915.7 as set for hub 19.20.B.3) are eligible for concessions as follows. The number of available concessions may be combined from different categories below for a maximum of three concessions per project.

G. Available Commercial Concessions. In addition to the other bonus and residential concessions provided in this Chapter, commercial development project that partner with affordable housing developers and provide at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low income households in accordance with Government Code Section 65915.7, are eligible for one of the following that is mutually agreed upon by the applicant and review authority:

1. Up to a 20-percent increase in maximum allowable intensity in the General Plan.
2. Up to a 20-percent increase in maximum allowable floor area ratio.
3. Up to a 20-percent increase in maximum height requirements.
4. Up to a 20-percent reduction in minimum parking requirements.
5. Use of a limited-use/application elevator for upper floor accessibility.
6. An exception to a zoning ordinance or other land use regulation.

#### Assembly Bill 1505 (Bloom)

This bill authorizes jurisdictions to adopt ordinances requiring new residential rental development to reserve a percentage of the units for households earning very low, low, or moderate income (inclusionary housing). West Hollywood's inclusionary onsite affordable housing requirement is that at least 20 percent of units be reserved for lower and moderate income households in new multi-unit development. In 2014, the City Council amended the Municipal Code to allow a developer not requesting a state density bonus for a new rental building to pay the affordable housing in-lieu fee instead of providing onsite affordable housing units. The City Council took this action consistent with the decision in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, which found rental inclusionary housing violated the Costa Hawkins Act by setting initial rental rates for rental units.



AB 1505 clarifies that jurisdictions have the right to require inclusionary onsite affordable housing in new multi-unit residential rental projects provided an alternative method of meeting the onsite requirement is provided. Staff received the following policy direction from the City Council to staff received on January 16, 2018, relative to implementing AB 1505:

- Bring forward a Municipal Code amendment, amending the zoning code consistent with AB 1505 to once again require new multi-unit residential projects of 11 units or more to provide onsite affordable housing; and
- Staff is to evaluate the in-lieu fees to be set at the cost of construction and the effect this might have on the production of housing.

In accordance with AB 1505, the proposed ZTA requires development projects of 11 or more residential units to provide affordable units onsite or under certain circumstances offsite within the City of West Hollywood. In addition, Section 19.22.040 Affordable Housing Fees continues to allow an in-lieu fee to be paid by developers of residential projects with 10 or fewer units, as an alternative method of meeting the affordable housing requirement. As directed by Council, staff will analyze the in-lieu fees and bring forward an adjustment to the Council’s fee schedule upon completion of the study. The main revision to Section 19.22.030(A) is the deletion of Table 3-5, which formerly allowed new residential projects with rental apartments constructed without a density bonus to pay an in-lieu fee as shown below.

~~A. Requirement. Projects subject to this chapter shall include provisions for inclusionary housing in one of the following ways described in Table 3-5:~~

**TABLE 3-5  
INCLUSIONARY HOUSING REQUIREMENT**

<b>Project Type</b>	<b>Requirement</b>
<del>1. Condominiums and Co-Operatives. Projects consisting of separately alienable units, including both newly constructed condominiums and common-interest development conversions.</del> <del>2. Apartments Constructed Using a Density Bonus. Projects that include non-alienable units for which the city provided a direct financial contribution or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Density Bonuses and Other Incentives).</del>	<del>a. Inclusionary units. In the quantity and of the quality specified in subsections B and D of this section.</del>
<del>3. Apartments Constructed without a Density Bonus. Projects that include non-separately alienable residential units for which the city did not provide a direct financial contribution or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Density Bonuses and Other Incentives).</del>	<del>b. Affordable housing impact fee established by Council resolution paid in-lieu of providing inclusionary units.</del>

## Additional Revisions to Chapter 19.22 Affordable Housing Requirements and Incentives

Several “clean-up” revisions to Chapter 19.22 that are not required by new legislation are included in the proposed zone text amendment. They are included to ensure compliance with state affordable housing law in California Government Code Section 65915.

### **Density Bonus for Inclusion of Child Care Facilities – Section 19.22.020**

In accordance with California Government Code Section 65915, a residential or mixed-use commercial/residential development that includes a child care facility or donates land for a child care facility is eligible for a density bonus. Sections 19.22.020(A)(4) Applicability addresses this provision in the ZTA through the addition of the following language:

4. A residential or mixed commercial/residential development including a child care facility that will be located on the premises of, as part of, or adjacent to, such a housing development, under California Government Code Section 65915.

Section 19.22.050(D)(3) includes the following added provision allowing a density bonus for a land donation or construction of child care facilities in conjunction with a residential project:

3. A density bonus for a land donation for a childcare center or construction of a child care centers shall be provided as set forth in Government Code Section 65915.

### **Accessory Dwelling Unit Exemption – Section 19.22.020**

A provision is proposed to be added to Section 19.22.020(B)(2) Applicability, exempting accessory dwelling units (ADUs) the City’s density bonus regulations. ADUs are single units that can be provided in conjunction with single family homes on one legal lot. Therefore, since owners of single family homes with an ADU would not be able to construct any additional units they would not be able to partake in the City’s inclusionary housing or density bonus programs.

### **Parking Reductions for Affordable Housing Projects – Section 19.22.050**

Section 19.22.050(F), of the Municipal Code has been amended to allow density bonus development relief from parking regulations as required by California Government Code Section 65915(b)(1) as shown below. The reduced parking allowance of 0.5 parking spaces per bedroom would apply to mixed residential/commercial development that includes the maximum percentage of low, very low income, transitional age youth, veteran or homeless persons units, provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development. This would apply to all projects within one-half mile of a major transit stop where there is unobstructed access to the stop. All properties in West Hollywood are within one-half mile of a major transit stop.

The following amendment has been added to the proposed ordinance to address parking incentives in compliance with state law:

*Parking Incentives.* Density bonus housing development shall be granted the following parking space requirements when requested by the developer, inclusive of handicapped, which shall be granted to all units in the development:

<b>Number of Bedrooms</b>	<b>Required Parking Spaces per Unit<sup>**</sup></b>
0 to 1 bedroom	1
2 to 3 bedrooms	2
4 or more bedrooms	2.5

\* If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. A development may provide on-site parking through a tandem and/or uncovered parking configuration.

\*\* If a residential or mixed residential/commercial development includes the maximum percentage of low, very low income, transitional age youth, veteran, or homeless persons units, provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development and is located within one-half mile of a major transit stop where there is unobstructed access to a major transit stop from the development, then, upon the request of the developer, a parking ratio not to exceed 0.5 spaces per bedroom shall apply to the residential portion of the development.

### **Offsite Construction of Inclusionary Units – Section 19.22.070**

Section 19.22.070 Offsite Construction of Inclusionary Units, allows developers of residential projects containing 11 or more units to apply for an exception to Section 19.22.030 Affordable Units Required, to provide required inclusionary housing units offsite, at one or more approved sites. A proposed revision to Section 19.22.070(A) specifies that a minimum of 2 units shall be provided at the offsite location. The proposed revision reads as follows:

A. The number of units to be provided off-site would be at minimum 2-units and would be greater than the number required on-site;

### **Implementation of Inclusionary Unit Provisions – Section 19.22.080**

Section 19.22.080 requires that density bonus or other incentive agreements and in-lieu fees be executed or paid within 30 days of approval of a project with inclusionary units. To clarify the City's existing practice, the ZTA proposes that this agreement be executed and fees paid prior issuance of building permits in accordance with the following text revisions:

C. *Agreements.* All projects that provide inclusionary units and/or use a density bonus, concession or waiver under this Chapter shall execute and record the City's Agreement Imposing Restrictions on Real Property before any building permit will issue for the project. The agreement shall explain the inclusionary and affordability requirements in clear and precise terms

~~Implementation of an approved density bonus or other incentives shall require the following agreements.~~

~~1. Within 30 days of the approval of a project with inclusionary units the applicant shall execute and record the city's Agreement Imposing Restrictions on Real Property. The agreement shall explain the inclusionary requirements in clear and precise terms.~~

~~2. Within 30 days of the approval of a project requiring an in lieu fee, the applicant shall execute and record an Agreement to Pay an Affordable Housing In Lieu Fee. The Agreement shall specify the amount of the fee and stipulate that the fee shall be paid before issuance of a building permit.~~

## **Rental, Sale, and Re-Sale of Inclusionary Units – Section 19.22.090**

Section 19.22.090 addresses the rental, sale, and resale of inclusionary units within multi-unit residential projects. Proposed revisions to this section clarify that any affordable unit provided to fulfill a requirement of Chapter 19.22 shall be permanently reserved and occupied by qualified households. This is proposed to be accomplished through the following zone text revision to the preamble in this section:

Any affordable unit provided to fulfill a requirement of this Chapter shall be permanently reserved for and occupied by qualified households meeting the affordable income requirement specified for the unit in the Resolution of Approval, and all other eligibility requirements. Eligibility requirements and a rental and sales price schedule for lower and moderate income households shall be established annually by Council resolution.

~~Newly constructed inclusionary units shall first be offered to eligible households displaced by the demolition necessary to construct the project.~~

Further proposed revisions address the amount of a security deposit and pet deposit through the addition of the following text in Section 19.22.090(A):

3. A security deposit equal to the greater of one month's rent or \$500 can be required.

4. A pet deposit can be in addition to, but cannot exceed 25-percent of the security deposit.

The final revisions to Chapter 19.22, include revisions to Section 19.22.090(B) Limitations on Purchasers and Sales Prices. These proposed zone text amendments clarify the appropriate provisions for the sale and resale of affordable units constructed pursuant with a state density bonus and those projects with no state density bonus.

### *B. Limitations on Purchasers and Sales Prices.*

The sale and resale of affordable units constructed pursuant with a state density bonus shall be in accordance with California Government Code 65915(c)(2).

1. The sale and resale of affordable units constructed for purposes of using a state density bonus under 19.22.050.D above shall be in accordance with California Government Code 65915(c)(2).

2. Newly constructed inclusionary units shall first be offered to eligible very low, low and moderate income households displaced by the demolition necessary to construct the project.

2. Secondly, the offer shall be made to other very low, low, or moderate displaced households with 100 to up to 120 percent of the medium income of in the city. and at a total cost of no more than two and one half times 120 percent of the median income of the city.

## Definitions of Specialized Terms and Phrases - Section 19.90.020

The proposed density bonus zone text amendment includes proposed terms and phrases to be included in Section 19.90.020 of the Municipal Code. Definitions of the following terms were not previously included in the Municipal Code and have been added to assist developers, decision-makers, and the public in understanding terms and phrases used in the density bonus ordinance. The following definitions are proposed to be added to this section:

- **Clustering.** A grouping of similar affordable housing units positioned or occurring closely together in a particular residential development.
- **Density Bonus.** Means a density increase over the otherwise allowable maximum residential density for a housing development or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.
- **Density Bonus (Affordable) Housing Agreement.** A recorded agreement between a developer and the city to ensure that the requirements of this chapter are satisfied. The agreement, among other things, shall establish the number of target units, their size, location, terms and conditions of affordability, and production schedule.
- **Density Bonus Units.** Those residential units granted pursuant to the provisions of this chapter that exceed the otherwise allowable maximum residential density for the development site.
- **Inclusionary Housing.** Regulation requiring new residential and mixed-use developments to include a specified number or percentage of new residential units to be provided for rent or sale on restricted terms deemed “affordable” to very low, low, or moderate income persons or families.
- **Major Transit Stop.** Means an existing site, or a site included in the regional transportation plan, that contains a rail transit station or the intersection of two or more major bus routes each with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A housing development is considered to be within one-half mile of a major transit stop if all parcels within the housing development have no more than 25 percent of their area farther than one-half mile from the stop and if not more than 10 percent of the units or 100 units, whichever is less, in the housing development are farther than one-half mile from the stop.

- **Special Needs Housing.** Means any housing, including supportive housing, intended to benefit, in whole or in part, persons identified as having special needs relating to mental health; physical disabilities; developmental disabilities, including without limitation intellectual disability, cerebral palsy, epilepsy, and autism; and risk of homelessness, and housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Mental Health Services Fund, created by Cal. Welf. & Inst. Code § 5890.

*2013-2021 City of West Hollywood Housing Element*

The City's adopted 2013-2021, Housing Element Policy encourages the creation of affordable housing through the inclusion of the goals and policies listed below. Adoption of the City's amended density bonus ordinance in compliance with state law will assist in implementing these goals/policies.

*Goal H-5:* Provide for a government environment that facilitates housing development and preservation. *Intent:* To mitigate potential governmental constraints to housing development, preservation, and affordability.

- *Policy H-5.1* – Provide incentives where feasible to offset or reduce the costs of affordable housing development, including density bonuses and flexibility in site development standards.

*Housing Program No. 12. Inclusionary Housing Ordinance*

The Inclusionary Housing Ordinance requires residential developers to set aside a portion of units in each new housing development for lower and moderate income households. This set-aside is 20 percent for projects with over ten units and one unit for projects with ten or fewer units. For projects with ten or fewer units, however, the City allows the option of paying an in-lieu fee that is deposited into the City's Affordable Housing Trust Fund. In addition, under certain circumstances, projects of any size can apply to provide inclusionary units off site.

To encourage the construction of affordable housing, the City provides developers who include inclusionary units in their projects with density bonuses. In addition to the standard bonus (per State density bonus law), bonuses can allow density increases up to 100 percent above the maximum density permitted by the underlying zone, if certain provisions are met. The Inclusionary Housing Ordinance also provides the following regulatory incentives: reduced requirements in the form of "concessions" or modifications to development standards (height, setbacks, open space), and permit lower minimum parking requirements. The Inclusionary

Housing Ordinance should be periodically monitored for full conformance with the State density bonus requirements.

*Timeframe and Objectives:*

- Continue to implement the Inclusionary Housing Ordinance.

- Continue to monitor market conditions and development trends to ensure that the Ordinance works effectively to provide affordable housing in the community but does not unduly constrain housing development in general. If constraints are identified, the City will make necessary improvements to the ordinance to enhance its effectiveness in facilitating the development of housing for all income groups.
- Continue to prioritize inclusionary housing units for tenants displaced due to Ellis Act and consider developing a programmatic approach within the Inclusionary Housing Ordinance to assist persons with disabilities (including persons with developmental disabilities) and those aging in place.
- Consider revising the Inclusionary Housing Ordinance to specifically identify the very low income households.

## **PUBLIC OUTREACH**

The staff team presented the proposed accessory dwelling unit ordinance to the West Hollywood Chamber of Commerce Government Affairs Committee (GAC) meeting on February 13, 2018. The GAC was generally supportive of the proposed revisions to the revised ordinance since they are consistent with and required by state law.

## **PUBLIC NOTICE**

The City published a legal notice in the Beverly Press and West Hollywood Independent on February 1, 2018. In addition to the noticing required by the Municipal Code, the Planning Division noticed all West Hollywood neighborhood groups by February 1, 2018.

## **ENVIRONMENTAL REVIEW**

The proposed Zone Text Amendment is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Future affordable residential, commercial, or mixed commercial/residential projects proposed by developers subject to the provisions of the density bonus ordinance will be required to undergo environmental review in conformance with CEQA to ensure that there are no significant environmental impacts to the site, future residents, or surrounding properties.

## **NEXT STEPS**

Planning Commission recommendations will be forwarded to the City Council for their information prior to taking action on the proposed revisions to the density bonus ordinance. Upon adoption of the ordinance by the City Council, staff would prepare a guidance document for the public and developers to assist them in processing density bonus projects in conformance with the new regulations.

## **EXHIBITS**

A. Draft Resolution No. PC 18-1242

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## RESOLUTION NO. PC 18-1242

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WEST HOLLYWOOD, RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONE TEXT AMENDMENT TO AMEND CHAPTER 19.22 (AFFORDABLE HOUSING REQUIREMENTS AND INCENTIVES) AND SECTION §19.90.020 (DEFINITIONS OF SPECIALIZED TERMS AND PHRASES) OF CHAPTER 19.20 OF TITLE 19 OF THE WEST HOLLYWOOD MUNICIPAL CODE TO ADOPT NEW POLICIES REGULATING AFFORDABLE HOUSING IN ACCORDANCE WITH STATE LAW, WITHIN THE CITY OF WEST HOLLYWOOD, CALIFORNIA.**

The Planning Commission of the City of West Hollywood hereby finds, resolves, and orders as follows:

SECTION 1. The City of West Hollywood initiated amendments to the Zoning Ordinance, Article 19 of the Municipal Code to adopt new regulations for affordable housing in response to recent changes in state law.

SECTION 2. A public hearing was duly noticed for the Planning Commission meeting of March 1, 2018 by publication in the Beverly Press newspaper, the West Hollywood Independent Newspaper, and the City website and by announcement on City Channel 6 by March 1, 2018.

SECTION 3. The proposed zone text amendment is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines. Section 15061 states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Affordable housing developments will be required to meet all local, state, and federal health and safety regulations to ensure that there are no significant environmental impacts and will be subject to further CEQA review in accordance with the accompanying discretionary permit approval. These revisions implement the requirements of state law and the City's inclusionary housing program and do not change the physical characteristics of the projects themselves..

SECTION 4. The proposed ZTA is consistent with the Primary Strategic Goals in the City of West Hollywood General Plan: (1) Adaptability to future change and (2) Affordable Housing. The proposed ZTA is also compliant with other General Plan goals: H-1 provide affordable housing, H-3 encourage a diverse housing stock to address the needs of all socioeconomic segments of the community, and H-6, promote equal access to housing for all within the City. The ordinance implements the rules and regulations for the City's inclusionary housing and density bonus program, both aimed at encouraging the provision of affordable housing in the City and implementing state law. This ordinance does not impede the City's ability to meet its general plan goals and policies because provision of affordable housing is central goal of the Plan.

**ITEM 10.A. EXHIBIT A**

SECTION 5. Based on the foregoing, the Planning Commission of the City of West Hollywood hereby recommends approval to the City Council of Zoning Text Amendment ZTA18-0001, which is attached hereto as Attachment A.

DRAFT

**PASSED, APPROVED AND ADOPTED** by the Planning Commission of the City of West Hollywood at a regular meeting held this 1<sup>st</sup> day of March, 2018 by the following vote:

AYES: Commissioner:

NOES: Commissioner:

ABSENT: Commissioner:

ABSTAIN: Commissioner:

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SUE BUCKNER, CHAIRPERSON

ATTEST:

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JOHN KEHO, INTERIM DIRECTOR  
COMMUNITY DEVELOPMENT DEPARTMENT  
CURRENT & HISTORIC PRESERVATION PLANNING

*Decisions of the Planning Commission are subject to appeal in accordance with the procedures set forth in West Hollywood Municipal Code Chapter 19.76. Any action to challenge the final decision of the City of West Hollywood made as a result of the public hearing on this application must be filed within the time limits set forth in Code of Civil Procedure Section §1094.6.*

# ATTACHMENT A

## Draft Zone Text Amendment

(New text indicated with underlining, deleted text with strikethrough.)

**Section 1:** Chapter 19.22, Affordable Housing Requirements and Incentives, of Title 19 of the West Hollywood Municipal Code is amended in its entirety to read as follows:

### **19.22.010 Purpose.**

A. This chapter provides requirements and incentives for the development of affordable housing units in conjunction with other residential and mixed use projects and commercial projects in partnership with affordable housing providers as provided under state law. These provisions are intended to implement General Plan policies encouraging the production of affordable housing for all economic groups, ~~low and moderate income housing~~ and housing for disabled and older residents, transitional age youth, disabled veterans, and homeless persons as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), all of which is integrated, compatible with and complements adjacent uses, and is located near public and commercial services.

B. The incentives offered in this chapter are used by the city as one means of meeting its commitment to encourage housing affordable to all economic groups, and to meet its regional fair share requirements for the construction and rehabilitation of housing affordable to very low, low, moderate, and above moderate income persons.

C. This Chapter shall be interpreted in a manner supplementary to and consistent with California Government Code Chapter 4.3 (State Density Bonus Law).

### **19.22.020 Applicability.**

A. This chapter shall apply to the following:

1. The construction of all residential units;
2. Common interest developments created through the conversion of existing residential units that were not subject to the city's affordable housing requirement at the time of construction; and
3. A residential or mixed commercial/residential development including a child care facility that will be located on the premises of, as part of, or adjacent to, such a housing development, under California Government Code Section 65915.

B. *Exemptions.* The provisions of this chapter shall not be applicable to the following:

1. A new single-family dwelling or the replacement of one single-family dwelling with another single-family dwelling; ~~and~~
2. Accessory dwelling units and junior accessory dwelling units; and
3. Commercial development project, except as may be applicable to obtain development bonuses under California Government Code Section 65915.7, where the developer of a commercial project has entered into an agreement for partnered housing with an affordable housing developer that contributes to affordable housing through a joint project or two separate projects encompassing affordable housing.

~~2. A project developed, owned, or operated by a nonprofit housing provider, not including residential care facilities, where all of the units are exclusively for low or low and moderate income persons.~~

### **19.22.025 Processing Density Bonus Applications**

A. The application for a density bonus and/or concessions shall be processed concurrently with the underlying land use permit and entitlement application and in accordance with the procedures set forth in Section 19.40.040. In addition to any other applicable application requirements, the application shall be made on a form supplied by the Community Development Department and shall include:

- i. A density bonus proposal that includes a description of the unit counts that make the project eligible for the requested density bonus;
- ii. A proposal for the specific concessions that the applicant requests. For “other regulatory concessions” under 19.22.050.E.2.f, the applicant shall provide an explanation of the regulatory concession and how it results in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the targeted units to be set as specified in Government Code Section 65915. The intent of this requirement is to provide reasonable documentation to establish eligibility for the concession or to demonstrate that the concession meets the definition set forth in Section 65915. The explanation may be, but is not required to be, in narrative form;
- iii. A proposal for any requested waiver or reduction of the development standard if compliance with a development standard would physically preclude construction of the project as proposed. The proposal shall include an explanation of how the development standard would physically preclude construction of the project as proposed; and
- iv. A proposal for any requested reduction in parking ratios under 19.22.050.F and an explanation for how the project is eligible for the requested reduction.

B. Review Authority. A request for density bonus or incentive shall be reviewed concurrently with and by the same review authority as the underlying application for land use permits and entitlements as set forth in Section 19.40.020.

C. Application for Density Bonus Housing Agreement. Once the land use permits, entitlements and any density bonus have been approved as described above, the applicant shall file an application, including the payment of any processing fees with the Housing Division for approval and finalization of the Agreement Imposing Restrictions on Real Property (Density Bonus Housing Agreement).

### **19.22.030 Affordable Units Required.**

~~A. Requirement. Projects subject to this chapter shall include provisions for inclusionary housing in one of the following ways described in Table 3-5:~~

**TABLE 3-5  
INCLUSIONARY HOUSING REQUIREMENT**

Project Type	Requirement
<p><del>1. Condominiums and Co-Operatives. Projects consisting of separately alienable units, including both newly constructed condominiums and common-interest development conversions.</del></p> <p><del>2. Apartments Constructed Using a Density Bonus. Projects that include non-alienable units for which the city provided a direct financial contribution or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Density Bonuses and Other Incentives).</del></p>	<p>a. <del>Inclusionary units. In the quantity and of the quality specified in subsections B and D of this section.</del></p>
<p><del>3. Apartments Constructed without a Density Bonus. Projects that include non-separately alienable residential units for which the city did not provide a direct financial contribution or any other form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code (Density Bonuses and Other Incentives).</del></p>	<p>b. <del>Affordable housing impact fee established by Council resolution paid in-lieu of providing inclusionary units.</del></p>

~~AB. Requirement. Projects subject to this chapter shall permanently set aside the following number of units as affordable to and reserved for *Number of Units Required*. Projects that are required to provide inclusionary units as described in subsection A shall provide the following number of inclusionary units to very low, low and moderate-income households as determined by eligibility requirements and a rental and sales price schedule established annually by Council resolution. Unless otherwise noted, inclusionary units provided shall be of comparable size and finish quality to the non-inclusionary units.~~

- ~~1. Projects of Ten or Fewer Units. One unit.~~
- ~~2. Projects of Eleven to Twenty Units. Twenty percent of the unit count provided as units of comparable size and finish quality to the non-inclusionary units, or provided as units that are a minimum of one bedroom and minimum interior area of 650 square feet with finishes and appliances of "builder's quality" or better.~~
- ~~3. Projects of Twenty-One to Forty Units. Twenty percent of the unit count provided as units of comparable size and finish quality to the non-inclusionary units, or 30 percent of the unit count of all non-inclusionary units provided with units that are a minimum of one bedroom and minimum interior area of 650 square feet with finishes and appliances of "builder's quality" or better.~~
- ~~4. Projects of Forty-One Units or More. Twenty percent of the unit count provided as units of comparable size and finish quality to the non-inclusionary units, or if it would result in additional inclusionary units and units that better serve the affordable housing needs of the city, 20 percent of the gross residential floor area of all non-inclusionary units. If the floor area calculation is used, units provided shall be a~~

minimum of one bedroom and a minimum interior area of 650 square feet with finishes and appliances of “builder’s quality” or better.

5. For mixed-use projects in the mixed-use overlay zone, applicants are permitted to choose their residential base unit count, provided it complies with the applicable FAR limitations and any size limitations for habitable units in the Building Code (and all other applicable standards that could limit the size or number of units)

CB. Common Interest Development Conversions. If the existing residential units to be converted to a common interest development include rental inclusionary housing units, the inclusionary units shall be sold as affordable units, or retained as affordable rental units.

1. If the option to retain affordable rental units is chosen, the owners shall record a covenant guaranteeing the affordability of the rental units and waiving certain rights granted by state law (Government Code Section 7060 et seq.) for the life of the project.

2. If the units are to be sold to targeted income groups, the owners shall record a covenant restricting future sales prices to levels affordable to the targeted income group.

a. Before approval of a final map, the applicant shall post tenant relocation fees for each inclusionary unit in an escrow account approved by the Director and the Finance Director. The amount deposited for each inclusionary unit shall be the maximum amount of tenant relocation fees allowed under the Rent Stabilization Ordinance ~~for tenants who reside in condominium units which are converted to condominiums after they began occupying the unit.~~ Tenant relocation fees shall be paid in compliance with the Rent Stabilization Ordinance.

Any difference between the amount of fees deposited by the applicant and the amount payable to the displaced tenant shall be refunded to the applicant. Any costs associated with the escrow accounts shall be paid by the applicant.

b. All purchasers of inclusionary units shall meet the city’s income guidelines for the income range targeted for that unit. Proof of income eligibility shall be submitted to the Director. Resale of units shall require that the Director first verify the purchaser as low or moderate income. This requirement shall be included in the recorded covenant.

DC. Unit Size, Type, and Location.

1. Unless otherwise permitted by other sections of the Zoning Ordinance, inclusionary units shall be reasonably dispersed throughout the project, shall contain on average the same number of bedrooms as the non-inclusionary units in the project, and shall be comparable with the non-inclusionary units in terms of appearance, finished quality, and materials as approved by the review authority.

2. The Commission, or City Manager as a minor modification of an approved development agreement, may modify the requirements as to unit size or type if it finds that a modification would better serve the affordable housing needs of the city.

3. While the intent is for inclusionary units to be dispersed throughout the project as much as possible, inclusionary units may be clustered within a building if the review authority, or City Manager as a minor modification of an approved development agreement, determines that such clustering ~~results in the creation of more affordable units than would otherwise be provided,~~ or provides a documented public benefit, or due to circumstances unique to the project size, location or design otherwise better serves the affordable housing needs of the city.

4. The Commission, may modify the requirement that inclusionary units be reasonably dispersed throughout a project and approve placement of the units in a separate structure on the site if doing so would better serve affordable housing needs and if all of the following conditions are satisfied:

a. The project contains a minimum of 30 inclusionary units and inclusionary units constitute at least 25 percent of the number of units in the market-rate portion of the project.

b. The inclusionary units are of comparable quality and materials of the market-rate units unless it can be demonstrated that this is infeasible.

c. The inclusionary units will be available for rental and will be actively marketed for rental at the same time as the market-rate units are available for occupancy, and rented within a time frame determined by the affordable housing agreement.

d. The inclusionary units will be managed by an experienced non-profit housing provider that is familiar with the West Hollywood area, population and needs.

e. Prior to issuance of any building permit for the project as a whole, the developer will provide a signed operating agreement with the non-profit housing provider acceptable to the City Council.

f. Prior to issuance of any building permit for the project as a whole, the developer will enter into and record an affordable housing agreement with the City of West Hollywood further describing conditions and covenants affecting the building including, but not limited to, income and rent restrictions, reporting requirements, capital reserve requirements, and programming.

g. The inclusionary units shall not be liable for any homeowners, condominium, or other fees or dues, and shall not be otherwise responsible for the debts or maintenance of the market rate portion of the project.

h. Covenants, conditions and restrictions of the market rate portion of the project shall contain provisions that ensure access to facilities as described in the affordable housing agreement, including, but not limited to, parking, access, and amenities that will be shared; representation, if any on the Condominium Board, and requirements for mediation of disputes.

i. The project will be owned by the developer or an affiliate of the developer for a period of time as designated in the affordable housing agreement, but in no event less than five years from issuance of a certificate of occupancy. The agreement will provide for a waiver of developer's and its successor's rights under Government Code Section 7060 et seq., to remove the inclusionary units from the rental market. If, after the period of ownership prescribed in the agreement the developer wishes to relinquish ownership, it may be sold subject to city approval under terms that will enable the non-profit operator to operate the project under the requirements of this section and the affordable housing agreement.

j. An on-site resident manager will be in place to serve the tenants occupying the inclusionary units.

k. The inclusionary units will receive the same quality of maintenance and capital improvements (excluding unit-specific upgrades) as the market-rate units. In addition, at a minimum, maintenance will be performed in accordance with Chapter 17.56 of this Code.

l. The inclusionary units will be covered with comparable insurance protection as provided to the market-rate development and common areas.



m. The developer will provide special services to the inclusionary unit tenants based on tenants' needs. These services shall be provided by a qualified non-profit provider. These services shall include a resident service coordinator and case management services. A full description of the services to be provided shall be included in the operating agreement.

n. The provision of affordable housing under this section will qualify the developer for bonus densities as provided in this Code and state law.

ED. *Builders Quality.* "Builders quality" appliances and materials shall mean those of durable, good and lasting quality, consistent with any applicable City Code requirements, and to the satisfaction of the Director of Community Development.

FE. Inclusionary units shall have the same number and type of appliances as non-inclusionary units. The exterior of inclusionary units shall be of the same appearance, finished quality and materials as the non-inclusionary units and shall be indistinguishable from the non-inclusionary units.

GF. When only one affordable dwelling unit is constructed, it may be allocated for a low or moderate income household. When two or more affordable units are constructed, they shall be allocated alternately for low income and moderate income households.

#### **19.22.040 Affordable Housing Fees.**

A. *In-lieu Fee.* Developers of residential projects with 10 or fewer units may choose to pay a fee, in-lieu of providing the required affordable unit on-site.

B. *Amount of Fee.* The amount of the in-lieu fee shall be calculated in compliance with the Council's Fee Schedule.

C. *Timing of Payment.* The fee required by this section shall be paid before issuance of a building permit for the approved project.

D. *Basis for Fee.* Fees paid to fulfill the requirements of this section shall be computed based on the number and size of the units to be constructed. Unit size shall be gross livable floor area, including private balconies, decks and patios.

E. *Affordable Housing Trust Fund.* Fees paid to fulfill the requirements of this chapter shall be placed in the city's Affordable Housing Trust Fund. The funds shall be used exclusively for projects which have a minimum of 60 percent of the dwelling units affordable to low- and moderate-income households, with at least 20 percent of the units available to low income households. Only tax exempt nonprofit corporations seeking to create or preserve the housing in the city shall be eligible to apply to the Council for funding. The funds may, at the discretion of the Council, be used for predevelopment costs, land or air rights acquisition, administrative costs, gap financing, or to lower the interest rate of construction loans or permanent financing. In a project that includes market-rate units, trust fund monies shall only be provided to assist in the acquisition and construction of those units affordable to lower- and moderate-income households.

#### **19.22.050 Affordable Housing Incentives.**

This section provides density bonuses for specified housing projects and commercial projects that are affiliated with onsite or offsite affordable housing projects as set forth in 19.22.020.B.3. The provided affordable units qualifying a project for a bonus shall be made permanently affordable to and reserved for households at the income levels qualifying the project for the bonus. For standards and bonuses for

congregate care and senior housing projects, see Section 19.36.110 (Congregate Care and Senior Residential Projects).

A. *Basis for Bonus*. In order to encourage the construction of housing affordable to very low, low, and moderate income persons, transitional age youth, disabled veterans, and homeless persons, and the replacement of residential rental units lost through new construction, density bonuses shall be allowed in compliance with this section. ~~In approving a density bonus the Review Authority shall consider the underlying zoning district, the need for specialized types of housing, and the particular operating needs of non-profit housing providers and social service agencies.~~

B. *Limitation on Use of Bonus*. A density bonus shall not be:

1. Used in conjunction with a project paying a fee in-lieu of providing inclusionary units;

2. Used with, or added to another density bonus provided for in the West Hollywood Municipal Code in the residential zoning district. This does not preclude a project that provides affordable housing from requesting any other incentives or concessions provided by Chapter 19.22;

~~3. Allowed for a project that proposes the demolition of a cultural resource (see Section 19.58.110(A)(5)); or~~

~~3.4 Used to increase any commercial floor area of a mixed-use project; the affordable housing density bonus shall only be applied to the residential floor area of the project, unless the project applies for a commercial density bonus under Government Code Section 65915.7 and referenced above in 19.22.020.B.3..~~

~~4.5 Used in conjunction with a project that An applicant shall be ineligible for a density bonus if they vacates or demolishes (1) rental units subject to Title 17 of this Code; (2) units subject to affordability restrictions that restrict rents to levels affordable to persons or families of lower or very low income; or (3) units otherwise occupied by lower or low income households within the five year period preceding the development application unless those units are replaced in accordance with Government Code Section 65915(c)(3) and provisions below.~~

~~a. "Replace" shall mean the following:~~

~~i. If any dwelling units described in subsection B.4 above are occupied on the date of application, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.~~

~~ii. For unoccupied dwelling units described in subsection B.4 above in a development with occupied units, the project shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy.~~

~~iii. If any dwelling units described in subsection B.4 above have been vacated or demolished within the five-year period preceding the application, the proposed project shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.~~

iv. For any dwelling units described in subsection B.4 above that is or was within the five-year period preceding the application (1) subject to Title 17 of this Code, and (2) is or was occupied by persons or families above lower income, those units shall be replaced with units that are subject to Title 17 of this Code, in accordance with Section 17.24.010.a.4.i.

v. If the income category of the last household in occupancy, or of the persons or families in occupancy at the highpoint, is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. Rebuttably presumed means that it is presumed to be true unless evidence is presented to prove otherwise, as determined by the Director of Human Services and Rent Stabilization.

b. Except as provided in subsection 4.a.iv above, the replacement units shall be made available at affordable rent or affordable housing cost to, and occupied by, persons or families in the same or lower income category as the occupancy that determines the replacement requirement herein.

c. The affordable replacement units shall be subject to a recorded affordability restriction and Section 19.22.090.

d. The affordable replacement units shall be counted towards the affordable units provided for purposes of calculating the density bonus in subsection D below and the inclusionary requirements in 19.22.030.

e. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.

f. "Equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

*C. Permanently Dedicated Affordable Housing Density Bonus in R3 and R4 Zones.* A density bonus equal to the percentage of units permanently dedicated to very low, low and moderate income persons may be permitted in the R3 and R4 zones if:

1. The minimum percentage of all project units, including bonus units, permanently dedicated to very low, low, and moderate income persons is 50 percent; and

2. The structure is maintained and operated by a ~~not for~~ non-profit organization.

*D. Density Bonus.* As provided by State law, ~~projects not utilizing the in-lieu fee described in Section 19.22.040 and unless restricted by 19.22.050.B,~~ projects may apply for housing density bonuses up to a maximum of 35 percent. Density bonuses shall be subject to the following:

1. Density Bonuses Permitted. The amount of density bonus granted shall be based on the following table:

Affordable Unit Type	Minimum % of Affordable Units	Density Bonus Granted	Additional Bonus for each 1% Increase in Affordable Units
Very Low Income	5%	20%	2.5%
Lower Income	10%	20%	1.5%
Moderate Income	10%	5%	1%
<u>Very low income units for transitional age youth, disabled veterans, or homeless persons, as those terms are defined in Government Code Section 65915</u>	<u>10%</u>	<u>20%</u>	<u>N/A</u>

2. A density bonus for a land donation for a childcare center or construction of a child care centers shall be provided as set forth in Government Code Section 65915.

3.2 Density Bonus Calculations.

a. For the purposes of calculating the permitted housing bonus in residential zones, “density” shall refer to the maximum ~~limit of dwelling units allowable~~ residential density per square foot of site area permitted in the zone in which the project is located. The density bonus may result in more market rate units than would otherwise be permitted by the zone. When the affordable housing density bonus is utilized on a project in a residential zoning district, no other bonus for additional density provided for in the West Hollywood Municipal Code (e.g., green building, senior housing, etc.) shall be applied to that project. The base number of units used to calculate the bonus does not include units added by a density bonus awarded pursuant to this section.

Example:

Base units	_____	20
+ Affordable Bonus	_____	5 (25% of the base)
Total Project Units	_____	25 [21 market rate and 4 affordable units (4
affordable units +	_____	
	_____	20% of base units)]

b. For the purposes of calculating the permitted housing bonus in commercial zones, “density” shall refer to the maximum floor area ratio (“FAR”) permitted in the zone in which the project is located, inclusive of applicable mixed-use bonuses. Because these projects are in the commercial zone, the FAR is not translated into a unit count for purposes of calculating the density bonus. In the commercial zones, the affordable housing density bonus authorized under this section shall only be used to increase the residential floor area of the project (unless otherwise authorized by Government Code 65915.7 as set forth in 19.20.020.B.3), but may be used in addition to any other applicable bonus available under the West Hollywood Municipal Code. In such event, the base FAR may be combined with any available mixed-use bonus to

determine the density from which the affordable bonus will be calculated. Any other applicable bonus (e.g., ~~green building~~ senior housing, etc.) shall be added after the affordable housing density bonus calculation.

Example:

Base FAR	1.5
+ Mixed use bonus FAR	0.5
-	= 2.0
FAR before affordable bonus	2.0
x Affordable housing density bonus	1.35
Total Project FAR	= 2.7
+ Green building bonus	0.1
Total Project FAR	2.8

c. Any density calculation, including base density and bonus density, that results in a fractional number shall be separately rounded up to the next whole number.

43. All affordable units shall be constructed on-site.

E. Concessions. In compliance with state law, projects that request a density bonus to provide on-site affordable housing (and commercial projects that partner with affordable housing developers and provide at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low income households authorized by Government Code 65915.7 as set forth in 19.20.020.B.3) are eligible for concessions as follows. The number of available concessions may be combined from different categories below for a maximum of three concessions per project.:

1. Number of Concessions.

Percentage of Affordable Units	Number of Concessions Permitted
5% Very Low, 10% Low, or 10% Moderate	1
10% Very Low, 20% Low, or 20% Moderate	2
15% Very Low, 30% Low, or 30% Moderate	3

2. Available Residential Concessions. The following concessions may be requested:

- a. Ten percent reduction in the minimum rear yard setback; or
- b. Ten percent reduction in the minimum front yard setback; or
- c. Ten percent reduction in the minimum side yard setback on one side;

or

- d. Ten percent reduction in total common open space required; or
- e. Ten percent reduction in private open space for up to 50 percent of the units.

f. An additional story, not to exceed 10 feet of the total project height, or other regulatory concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the affordable units as specified in Government Code Section 65915.

3. Concessions may be denied by the review authority if one of the following findings can be made, based on substantial evidence:

a. The concession or incentive does not result in identifiable and actual cost reductions ~~is not required in order~~ to provide for affordable housing costs, or for rents for the targeted units to be set as specified in Section 65915 of the California Government Code;

b. The concession would have a specific adverse impact, as defined in Section 65915 of the California Government Code, 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; or

c. The concession would be contrary to state or federal law.

4. Review Authority:

a. The review authority for requests for concessions under this subsection (f) shall be the Planning Commission.

b. The review authority for requests for concessions under subsections a-e will be reviewed based on the number of unit threshold detailed in Table 4.2.

F. *Parking Incentives.* Density bonus housing development shall be granted the following parking space requirements when requested by the developer, inclusive of handicapped, which shall be granted to all units in the development:

<b>Number of Bedrooms</b>	<b>Required Parking Spaces per Unit<sup>**</sup></b>
0 to 1 bedroom	1
2 to 3 bedrooms	2
4 or more bedrooms	2.5

\* If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. A development project may provide on-site parking through a tandem and/or uncovered parking configuration.

\*\* If a residential or mixed residential/commercial development project includes the maximum percentage of low, very low income, transitional age youth, veteran, or homeless persons units, provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development and is located within one-half mile of a major transit stop where there is unobstructed access to a major transit stop from the development, then, upon the request of the developer, a parking ratio not to exceed 0.5 spaces per bedroom shall apply to the residential portion of the development.

Guest parking shall not be required for projects utilizing the affordable housing density bonus provided in this section.

G. Available Commercial Concessions. In addition to the other bonus and residential concessions provided in this Chapter, commercial development projects that partner with affordable housing developers and provide at least 30 percent of the total

units for low-income households or at least 15 percent of the total units for very low income households in accordance with Government Code Section 65915.7 as set forth in 19.20.020.B.3 are eligible for one of the following that is mutually agreed upon by the applicant and review authority:

1. Up to a 20-percent increase in maximum allowable intensity in the General Plan.

2. Up to a 20-percent increase in maximum allowable floor area ratio.

3. Up to a 20-percent increase in maximum height requirements.

4. Up to a 20-percent reduction in minimum parking requirements.

5. Use of a limited-use/application elevator for upper floor accessibility.

6. An exception to a zoning ordinance or other land use regulation.

### **19.22.070 Off-Site Construction of Inclusionary Units.**

Developers of residential projects containing 11 units or more may apply for an exception to Section 19.22.030 to provide required inclusionary housing off-site, at one or more approved sites. Application materials for the off-site project shall be filed concurrently with application materials for the main project. The Commission may grant an exception allowing off-site inclusionary units only after first finding that:

A. The number of units to be provided off-site would be at minimum 2-units and would be greater than the number required on-site;

B. All off-site inclusionary units will contain on average the same number of bedrooms as the non-inclusionary units in the project, and be comparable with the non-inclusionary units in terms of appearance, finished quality, materials, and location within the building; the Commission may modify the requirements as to unit size or type if it finds that a modification would better serve the affordable housing needs of the City;

C. All inclusionary off-site units would be constructed before or concurrently with the main project and final approval of the project shall be contingent upon completion and final approval of the inclusionary units;

D. Off-site inclusionary units shall be allowed only in those areas which are designated in the General Plan for medium to high density residential development (e.g., R3 and R4 zoning districts);

E. Off-site inclusionary units shall only be constructed and managed in conjunction with a nonprofit housing development corporation; and

F. Approval of the off-site inclusionary units shall not result in an over concentration of low income housing in any specific neighborhood within the city.

### **19.22.080 Implementation of Inclusionary Unit Provisions.**

A. *Resolution of Approval.* The resolution approving a development permit for any project which provides inclusionary units shall specify the following items:

1. The density bonus being provided;
2. Whether an in-lieu fee is required;
3. The number and square footage of inclusionary units to be provided;
4. The number and square footage of units at each applicable sales price or rent level, and the number of parking spaces provided to each unit; and
5. A list of any other incentives, concessions, reductions or waivers approved by the city.

B. *Fee.* If an in-lieu fee is required, the fee shall be determined in compliance with Chapter 19.64 (Development Fees) and shall be paid before any building permit will issue for the project.

C. *Agreements.* All projects that provide inclusionary units and/or use a density bonus, concession or waiver under this Chapter shall execute and record the City's Agreement Imposing Restrictions on Real Property before any building permit will issue for the project. The agreement shall explain the inclusionary and affordability requirements in clear and precise terms. Implementation of an approved density bonus or other incentives shall require the following agreements.

~~1. Within 30 days of the approval of a project with inclusionary units the applicant shall execute and record the city's Agreement Imposing Restrictions on Real Property. The agreement shall explain the inclusionary requirements in clear and precise terms.~~

~~2. Within 30 days of the approval of a project requiring an in lieu fee, the applicant shall execute and record an Agreement to Pay an Affordable Housing In Lieu Fee. The Agreement shall specify the amount of the fee and stipulate that the fee shall be paid before issuance of a building permit.~~

D. *Construction Schedule.* All inclusionary units in a residential development shall be constructed concurrently with or before the construction of the non-inclusionary units.

E. *Phasing.* In the event a phased project is approved by the city, required affordable units shall be provided proportionally within each phase.

F. *Occupants.* New inclusionary units shall be occupied in the following manner:

1. If residential rental units are being demolished and the existing tenants ~~meet the~~ earn very low, low, income or moderate incomes and meet all qualifying requirements, the tenants shall be given the right of first offer ~~refusal~~ to occupy the inclusionary units;

2. If there are no qualified tenants, or if the qualified tenants choose not to exercise the right of first offer ~~refusal~~, or if no demolition of residential rental units occurs, then qualified tenants shall be selected from the city's Inclusionary Housing Waiting List; or

3. If the new inclusionary unit is a sales unit and the existing tenants decline the unit or are not qualified applicants, the city shall conduct a lottery to select qualified prospective buyers.

### **19.22.090 Rental, Sale and Re-Sale of Inclusionary and Affordable Units.**

Any affordable unit provided to fulfill a requirement of this Chapter shall be permanently reserved for and occupied by qualified households meeting the affordable income requirement specified for the unit in the Resolution of Approval, and all other eligibility requirements. Eligibility requirements and a rental and sales price schedule for very low, low, and moderate income households shall be established annually by Council resolution.

~~Newly constructed inclusionary units shall first be offered to eligible households displaced by the demolition necessary to construct the project.~~

A. *Rental of Units.*

1. If units are offered for rent, the project owner or developer shall rent the units directly to the required number of very low-, low- and moderate-income households at the rental rate established by Council resolution.



2. The rental rate shall include charges for the unit, parking, pets, water and trash, and all building amenities, unless otherwise specified in the resolution of approval required by Section 19.22.080(A).

3. A security deposit equal to the greater of one month's rent or \$500 can be required.

4. A pet deposit can be in addition to, but cannot exceed 25-percent of the security deposit.

*B. Limitations on Purchasers and Sales Prices.*

~~The sale and resale of affordable units constructed using a state density bonus shall be in accordance with California Government Code 65915(c)(2).~~

1. The sale and resale of affordable units constructed for purposes of using a state density bonus under 19.22.050.D above shall be in accordance with California Government Code 65915(c)(2).

2. Newly constructed inclusionary units shall first be offered to eligible very low, low and moderate income households displaced by the demolition necessary to construct the project.

~~2. Secondly, the offer shall be made to other very low, low, or moderate displaced households with 100 to up to 120 percent of the median income of in the city and at a total cost of no more than two and one half times 120 percent of the median income of the city.~~

3. The remaining units, and all other newly constructed units and any inclusionary units in a building undergoing conversion to common interest development, shall be offered to very low, low, and moderate income households.

4. Lower income inclusionary units shall be sold at a price that is no more than two and one-half times 65 percent of the median income of the city, and adjusted by the "bedroom factor." Qualifying income levels shall be established annually by the Council.

5. Moderate income inclusionary units shall be sold at a price that is no more than two and one-half times the median income of the city, and adjusted by the "bedroom factor." Qualifying income levels shall be established annually by the Council.

6. The sales price of the inclusionary unit is dependent on the unit size and is therefore adjusted by the "bedroom factor" established annually by the Council.

7. Expected homeowners' association fees shall be included in the calculation of total unit costs.

*C. Right of First Refusal.* After offering the units to eligible households displaced by demolition, the developer of a project shall be required to give right of first refusal to purchase any or all inclusionary units to the city, or a city-designated agency or organization, for at least 60 days from the date of construction completion.

*D. Lottery.* If the city chooses not to exercise its right of first refusal, it shall conduct a lottery to establish a list of eligible purchasers within that same time period. If the list is not provided, the developer may select the low- or moderate-income purchasers as long as the city verifies income eligibility and the units are sold at a price no more than two and one-half times the median income for the city.

*E. Resale of Units.* Upon resale, the affordable units shall remain affordable to the targeted income group. The resale price shall be set as follows:

1. The price resulting from the total costs, including homeowners association fees, shall be:

a. Moderate income units: a total cost of no more than two and one-half times the median income for the city, for moderate income households.

b. Lower income units: a total cost of no more than two and one-half times 65 percent of the median income for the city for low income households.

c. The sales price of the inclusionary unit is dependent on the unit size and is therefore adjusted by the “bedroom factor.”

d. Expected homeowners’ association fees shall be included in the calculation of total unit costs.

2. If, during the tenure of the most recent occupant, the homeowners’ association fees have risen at a rate faster than the median income for the city, the resale price shall be the higher of:

a. The calculation in subsection (E)(1), above; or

b. The most recent previous sale price increased by the average rise over the last 10 years of the housing component of the Consumer Price Index, multiplied by the number of years of the owner’s tenure.

3. Resale of units shall be subject to an agreement in compliance with Section 19.22.080(C) (Agreements).

F. *Sales Price Schedule*. Sales prices are adjusted annually based on the median income of the city and are subject to City Council approval.

**Section 2:** The following new definitions are added to the alphabetical list of definitions in Section 19.90.020 Definitions of Specialized Terms and Phrases, Chapter 19.20 of Title 19 of the West Hollywood Municipal Code to read as follows:

C. Definitions, “C.”

**Clustering**. A grouping of similar affordable housing units positioned or occurring closely together in a particular residential development and not dispersed throughout the project.

D. Definitions “D”

**Density Bonus**. Means a density increase over the otherwise allowable maximum allowable residential density for a housing development or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

**Density Bonus (Affordable) Housing Agreement**. A recorded agreement between a developer and the city to ensure that the requirements of this chapter are satisfied. The agreement, among other things, shall establish the number of affordable units, their size, location, terms and conditions of affordability, and production schedule.

**Density Bonus Units**. Those residential units granted pursuant to the provisions of this chapter that exceed the otherwise allowable maximum residential density for the development site.

I. Definitions “I”

**Inclusionary Housing.** Regulation requiring new residential and mixed-use developments to include a specified number or percentage of new residential units to be provided for rent or sale on restricted terms deemed “affordable” to very low, low, or moderate income persons or families.

M. Definitions “M”

**Major Transit Stop.** Means an existing site, or a site included in the regional transportation plan, that contains a rail transit station or the intersection of two or more major bus routes each with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A housing development is considered to be within one-half mile of a major transit stop if all parcels within the housing development have no more than 25 percent of their area farther than one-half mile from the stop and if not more than 10 percent of the units or 100 units, whichever is less, in the housing development are farther than one-half mile from the stop.

S. Definitions “S”

**Special Needs Housing.** Means any housing, including supportive housing, intended to benefit, in whole or in part, persons identified as having special needs relating to mental health; physical disabilities; developmental disabilities, including without limitation intellectual disability, cerebral palsy, epilepsy, and autism; and risk of homelessness, and housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Mental Health Services Fund, created by Cal. Welf. & Inst. Code § 5890.

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