



PLANNING COMMISSION REGULAR AGENDA

DATE: Tuesday, May 14, 2024

TIME: 7:00 PM

PLACE: COUNCIL CHAMBER

INFORMATION FOR THE PUBLIC

Information regarding meetings, including agenda materials, schedules and more, please visit the City's Meetings & Agendas webpage: <https://www.cityofmartinez.org/government/meetings-and-agendas>.

REMOTE PARTICIPATION

This meeting will be conducted in-person in the City Hall Council Chamber and shall be aired in real time via Zoom. The City cannot guarantee the public's access to teleconferencing technology, nor guarantee uninterrupted access as technical difficulties may occur from time to time. If attending via Zoom, please join us by choosing any of the following options:

Via Mobile Phone or Desktop, using the Zoom App direct link: <https://cityofmartinez-org.zoom.us/j/95279026082>

1. Via Web Browser, from <https://zoom.us/join>
 - a. Webinar ID: **952 7902 6082**
 - b. Passcode: **874919**

2. Via Phone by calling **(669) 900-6833** and enter the provided meeting details above.

PUBLIC COMMENTS

Public comments can be made in person at the meeting or submitted in writing. Written comments must be received by 12pm the day of the meeting. For information on how to submit written comments, please visit the City's Meetings & Agendas webpage linked above.

ADA ACCOMODATIONS

In accordance with the Americans with Disabilities Act and California law, the Council Chamber is wheelchair accessible and disabled parking is available at City Hall. If you are a person with a disability and require modifications or accommodation to attend and/or participate in this meeting, please contact the City Clerk's Office at (925) 372-3512. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

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PLANNING COMMISSION REGULAR AGENDA

CALL TO ORDER - PLEDGE OF ALLEGIANCE

ROLL CALL - Sean Trambley (Chair) -- Tracey Casella (Vice Chair) -- Jonathan Bash -- Joseph Evans -- Susan Gustofson -- Rochelle Johnson -- Jason Martin -- John Klopp (Alternate)

CIVILITY STATEMENT - As your appointed Governing Board, we will treat each other and the public with patience, civility, and courtesy as a model of the same behavior we wish to reflect in Martinez for the conduct of all City business and community participation. This includes respect for everyone's First Amendment Right to voice their opinion on matters within the City's subject matter jurisdiction, even if that opinion is different from our own. The decisions made tonight will be for the benefit of the Martinez community and not for personal gain.

PUBLIC COMMENT - For items not on the agenda. Non-agenda public comment is limited to matters which are within the subject matter jurisdiction of the Commission, and which are not action items listed elsewhere on the agenda.

CONSENT

Approve the Planning Commission Meeting Action Minutes, dated April 9, 2024.
[Action Minutes, dated April 9, 2024](#)

REGULAR

Conduct a public hearing and adopt Resolution No. 24-03, recommending the City Council approve a Zoning Text Amendment to amend the Martinez Municipal Code ("MMC") by 1) amending Chapter 22.04 (Definitions) to add definitions for "Concessions" and "Waivers" and 2) establishing new and amending existing regulations for California State Density Bonus Law ("SDBL") by revoking Chapter 22.57 (Density Bonus) and adding Chapter 22.80 (Density Bonus).

[Staff Report – California State Density Bonus Zoning Text Amendment](#)

[Attachment A – Draft Planning Commission Resolution No. 24-03](#)

[Exhibit A – Draft Ordinance](#)

[Attachment B – Strikethrough and Underline Version of Proposed Code Amendments](#)

COMMISSION ITEMS

PLANNING MANAGER UPDATES

COMMUNICATIONS

ADJOURNMENT - Adjourn to a Planning Commission Regular Meeting on Tuesday, May 28, 2024, at 7:00 p.m.

By May 10, 2024, a true and correct copy of this agenda was posted on the City Hall Kiosk, located at 525 Henrietta Street, Martinez, CA 94553, and on the City website at www.cityofmartinez.org.

 ,Administrative Aide III



Action Minutes

Planning Commission Regular Meeting
 Tuesday, April 9, 2024 at 7:00 p.m.
 Via Video/Teleconference

* Full details are available via audio/video recording on our [website](#). *Microsoft Internet Explorer browser is recommended for video-viewing compatibility or enable Adobe Flash on your default browser.*

Commissioners on Video Conference		City Staff on Video Conference
Chair Sean Trambley	Present	Michael P. Cass, Planning Manager
Vice Chair Tracey Casella	Excused	Daniel Gordon, Associate Planner
Commissioner Jonathan Bash	Present	Dee Dee Fendley, Administrative Aide III
Commissioner Joseph Evans	Present	
Commissioner Susan Gustofson	Excused	
Commissioner Rochelle Johnson	Absent	
Commissioner Jason Martin	Present	
Commissioner John Klopp (Alternate)	Present	

Call to Order
Meeting called to order at 7:00 p.m.

Public Comment (01:26 in video)
None

Consent Calendar (01:51 in video)				
1. Approval of the January 23, 2024 Planning Commission Action Minutes				
Speakers:	None			
Public Comment:	None			
Closing Comments:	None			
Motion to:	Approve			
Motion by:	Commissioner Bash		Seconded By: Commissioner Klopp	
Motion passed 5-0	Sean Trambley	Aye	Susan Gustofson	Excused
	Tracey Casella	Excused	Rochelle Johnson	Absent
	Jonathan Bash	Aye	Jason Martin	Aye
	Joseph Evans	Aye	John Klopp (Alternate)	Aye

Regular Items (02:38 in video)
2. Conduct a public hearing and adopt Resolution No. 24-02, recommending that the City Council adopt an Ordinance Approving a Zoning Map and Zoning Text Amendment to amend the Martinez Municipal Code by: 1) comprehensively updating the permitted and conditionally permitted uses for the Commercial, Industrial, Research and Development, and Professional and Administrative zoning districts; 2) amending Chapter 22.04 (Definitions) to remove the

individual numbering and add definitions consistent with the updated uses; 3) amending Chapters 22.14 (PA Professional and Administrative Office Districts), 22.15 (C Commercial Districts), and 22.18 (I Industrial Districts) by revising setback and building separation standards to be consistent with other zoning districts; 4) amending Chapters 22.15 (RD Research and Development Districts) and 22.18 (I Industrial Districts) by modifying development standards to incentivize industrial development and establishing performance standards; 5) repealing Chapter 22.30 (U Undesignated Districts); 6) adding Chapter 22.31 (Temporary Use Permits) to regulate temporary uses, such as mobile vendors; 7) Revising Section 22.36.060 (Parking – Industrial Uses) to reduce industrial parking requirements; 8) revising Chapter 22.43 (Accessory Dwelling Units and Junior Accessory Dwelling Units) to comply with State law and clarify existing regulations; 9) revising Chapter 22.08 (District Designations) to be consistent with the elimination of the TC Thoroughfare Commercial, CR Commercial Recreation, CI Controlled Industrial, and U Undesignated zoning districts; 10) approving a Zoning Map Amendment: for 45 parcels zoned TC/NC Thoroughfare Commercial/Neighborhood Commercial to NC Neighborhood Commercial; for six parcels zoned TC Thoroughfare Commercial to NC Neighborhood Commercial; for four parcels zoned CR Commercial Recreation to NC Neighborhood Commercial; for 11 parcels zoned M-29 Multifamily to R-1.5 Residential; for 12 parcels zoned PA/CI Professional and Administrative/Controlled Industrial to PA/RD Professional and Administrative/Research and Development; for 14 parcels zoned RB Retail Business to NC Neighborhood Commercial; and for one parcel zoned ECD/CI Environmental Conservation District/Controlled Industrial to ECD/SC Environmental Conservation District/Service Commercial; 11) approving a Zoning Map Amendment to rezone all parcels zoned U Undesignated to appropriate zoning designations consistent with the General Plan; and 12) other minor revisions.

<p>Speakers:</p>	<ul style="list-style-type: none"> • Daniel Gordon, Associate Planner, gave a presentation outlining the project. • Commissioner Martin asked for clarification of a “legal parking space” regarding food trucks (mobile vendors). He confirmed that current, vacant properties do not have to activate their storefronts and the proposed regulations would only apply to properties requesting a planning entitlement. Commissioner Martin asked who would be responsible for obtaining the temporary use permit. • Chair Trambley confirmed that food trucks using legal parking spaces would need to pay the parking fees while occupying these spaces. He asked if the update to food truck regulations was bringing the City into compliance with State law. • Commissioner Klopp asked if the updates would change the process for approval of Conditional Use Permits. He inquired about the process for controversial uses.
<p>Public Comment:</p>	<ul style="list-style-type: none"> • Dennis Boettcher stated that Five Suns Brewing is the most impacted business at this time. He supports the proposed food

	<p>truck regulations. He asked for information regarding the process for obtaining a Temporary Use Permit. He asked if the City has received any feedback from current food truck operators in Martinez.</p>
<p>Closing Comments:</p>	<ul style="list-style-type: none"> • Commissioner Bash suggested that the time the food trucks are allowed to operate be extended beyond 10:00 p.m., given that people may be drinking alcoholic beverages and food options late in the evening may be beneficial from a safety standpoint. • Planning Manager Cass suggested reconsideration of the permitted hours could occur when the Noise Ordinance is updated.
<p>Motion to:</p>	<p>Adopt Resolution No. 24-02, recommending that the City Council adopt an Ordinance Approving a Zoning Map and Zoning Text Amendment to amend the Martinez Municipal Code by: 1) comprehensively updating the permitted and conditionally permitted uses for the Commercial, Industrial, Research and Development, and Professional and Administrative zoning districts; 2) amending Chapter 22.04 (Definitions) to remove the individual numbering and add definitions consistent with the updated uses; 3) amending Chapters 22.14 (PA Professional and Administrative Office Districts), 22.15 (C Commercial Districts), and 22.18 (I Industrial Districts) by revising setback and building separation standards to be consistent with other zoning districts; 4) amending Chapters 22.15 (RD Research and Development Districts) and 22.18 (I Industrial Districts) by modifying development standards to incentivize industrial development and establishing performance standards; 5) repealing Chapter 22.30 (U Undesignated Districts); 6) adding Chapter 22.31 (Temporary Use Permits) to regulate temporary uses, such as mobile vendors; 7) Revising Section 22.36.060 (Parking – Industrial Uses) to reduce industrial parking requirements; 8) revising Chapter 22.43 (Accessory Dwelling Units and Junior Accessory Dwelling Units) to comply with State law and clarify existing regulations; 9) revising Chapter 22.08 (District Designations) to be consistent with the elimination of the TC Thoroughfare Commercial, CR Commercial Recreation, CI Controlled Industrial, and U Undesignated zoning districts; 10) approving a Zoning Map Amendment: for 45 parcels zoned TC/NC Thoroughfare Commercial/Neighborhood Commercial to NC Neighborhood Commercial; for six parcels zoned TC Thoroughfare Commercial to NC Neighborhood Commercial; for four parcels zoned CR Commercial Recreation to NC Neighborhood Commercial; for 11 parcels zoned M-29 Multifamily to R-1.5 Residential; for 12 parcels zoned PA/CI Professional and Administrative/Controlled Industrial to PA/RD Professional and Administrative/ Research and Development;</p>

	for 14 parcels zoned RB Retail Business to NC Neighborhood Commercial; and for one parcel zoned ECD/CI Environmental Conservation District/Controlled Industrial to ECD/SC Environmental Conservation District/Service Commercial; 11) approving a Zoning Map Amendment to rezone all parcels zoned U Undesignated to appropriate zoning designations consistent with the General Plan; and 12) other minor revisions.			
Motion by:	Commissioner Martin		Seconded By: Commissioner Bash	
Motion passed 5-0	Sean Trambley	Aye	Susan Gustofson	Excused
	Tracey Casella	Excused	Rochelle Johnson	Absent
	Jonathan Bash	Aye	Jason Martin	Aye
	Joseph Evans	Aye	John Klopp (Alternate)	Aye

Commission Items (43:13 in video)	
Comments/ Updates	None

Planning Manager Items (43:21 in video)	
Comments/ Updates	<p>Planning Manager Cass provided the following updates:</p> <ul style="list-style-type: none"> • The City resubmitted the Revised Adopted Housing Element to the Department of Housing and Community Development (“HCD”) for certification. The City Council also approved a revised and restated Resolution. There will be a 60-day review period by HCD. • Early in 2024, the City Council approved amendments to the City’s cannabis regulations. • The City’s Waterfront Marina Trust Land Use Plan was approved by the City Council in March and has been submitted to the State Lands Commission for final approval. • The Housing Element Annual Progress report was brought forward at the last City Council meeting. The report was encouraging as the City issued building permits for 88 dwelling units in 2023. • The City Council also approved the Universal Design Regulations which deal with accessibility requirements for new residential construction. • The regulations for all-electric construction approved by the City Council in late 2022 have been eliminated and will not be enforced by the City. • The following two items will be up for consideration soon: <ul style="list-style-type: none"> ➢ Density bonus regulations to comply with State law ➢ Update of the Growth Management Element of the General Plan

Communications (51:05 in video)	
Comments/ Updates	None

Adjournment (51:23 in video)	
Chair Trambley adjourned the meeting at 7:51 p.m.	

Sean Trambley, Chair

Dee Dee Fendley, Administrative Aide III



STAFF REPORT

Planning Commission

Date: May 14, 2024
To: Planning Commission
From: Michael P. Cass, Planning Manager
Prepared By: Brandon Northart, Associate Planner
Subject: California State Density Bonus Zoning Text Amendment

Recommendation

Conduct a public hearing and adopt Resolution No. 24-03, recommending the City Council approve a Zoning Text Amendment to amend the Martinez Municipal Code (“MMC”) by: 1) amending Chapter 22.04 (Definitions) to add definitions for “Concessions” and “Waivers” and 2) establishing new and amending existing regulations for California State Density Bonus Law (“SDBL”) by revoking Chapter 22.57 (Density Bonus) and adding Chapter 22.80 (Density Bonus).

Background

The SDBL was adopted in 1976 to address California’s affordable housing needs. The SDBL requires local agencies to allow increased density and reduce development standards based on the number and type of affordable housing units proposed. Over time, the law has been expanded to include housing for households at a wider range of income levels and with specialized needs (e.g., seniors, students, foster youth, formerly homeless persons, or disabled veterans).

The SDBL applies to housing projects, including mixed-use developments, new subdivisions, or common-interest developments. Density bonuses and associated incentives and concessions are intended to offset the financial burden of constructing affordable units. The density bonus and associated concessions are based on the amount and type of affordable units provided and include the following:

- Density Bonus: An increase above the maximum allowed density permitted in the General Plan Land Use Element and/or Zoning Ordinance. The amount of the bonus is set on a sliding scale based on the percentage of affordable units at each income level.
- Incentives/Concessions: Modifications to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of required incentives is based on the percentage of affordable units provided in the qualifying project. For example,

developers may ask for increased height above that allowed by the zoning regulations, reductions in setbacks and square footage requirements, or any other regulatory incentive or concession that would achieve actual cost reductions in the affordable housing costs. Incentives/concessions should be used before applying for a waiver of development standards.

- Reductions/Waivers: Modification to City development standards that would physically prevent the construction of a housing development at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, adverse impact on property listed in the California Register of Historical Resources, or would be contrary to the law. There is no limit to the number of reductions/waivers that may be requested. For example, applicants may request decreased setbacks and/or increased floor area ratio and/or waiver of hillside regulations. Waivers cannot generally be denied unless the reduction/modification of the development standard would cause an adverse impact on the health, safety, or physical environment that cannot be mitigated. For example: if an applicant proposes to build a structure on a steep slope that is not safe and that cannot be mitigated, then a waiver to allow construction on a steeper slope cannot be granted.
- Reduced Parking Ratios: Maximum required parking ratios are defined based on unit size:
 - Zero to one bedroom: one off-street parking space per unit
 - Two to three bedrooms: one and one-half off-street parking spaces per unit
 - Four or more bedrooms: two and one-half parking spaces per unit.

Like many jurisdictions, the reduced parking ratios for Martinez are lower than the current Municipal Code parking requirements, except properties within one half-mile walking distance of public transportation where no parking is required pursuant to State law.

Program 15: Access to Opportunities, Density Bonuses, and Incentives” of the 2023-2031 Housing Element and Task 16 of the 2024 Planning Division Work Plan include: 1) updating the Zoning Ordinance to reflect recent changes to SDBL to bring the City into compliance with State law and 2) incorporate an additional density bonus incentive for projects providing very low-, low-, and/or moderate-income households for special needs populations. The proposed project implements Housing Element Program 15 and Work Plan Task 16.

Discussion

The City’s local Density Bonus Ordinance (located in MMC Chapter 22.57) was adopted in 2014 and has yet to receive any updates. As a result, Martinez does not comply with current State Density Bonus Law.

As such, staff proposes to repeal MMC Chapter 22.57 and add Chapter 22.80 to amend the existing density bonus regulations with the ordinance attached to this staff report

(Exhibit A). The new regulations would adopt the SDBL by reference and identify when the regulations apply. The draft ordinance also contains requirements related to physical constraints and parking reductions, stipulates what can constitute as an incentive/concession, outlines application requirements, and specifies the approval process for projects. The draft ordinance also acknowledges future State law amendments may occur. Lastly, the new regulations would also require applicants to utilize their available concessions prior to waivers since making the findings for a concession are easier to make compared to waivers, which may further help support getting waivers granted if an applicant can't use a concession without a waiver of other standards.

In future years, as the legislature continues to amend and/or refine SDBL, the MMC would likely remain consistent with State law and zoning updates for density bonuses would be minimized. In addition, by referencing State law, City staff will find it easier to process applications and communicate relevant regulations to applicants, the public, and appointed/elected officials.

Staff also proposes to add definitions related to "Concessions" and "Waivers" as they related to SDBL to MMC Chapter 22.04 (Definitions).

Local jurisdictions may allow greater density bonuses and additional incentives than the SDBL. Greater incentives could include a higher density bonus (including a density bonus for workforce housing), more concessions, and/or reduced parking requirements. For this reason, and as stated in "Program 15: Access to Opportunities, Density Bonuses, and Incentives" of the 2023-2031 Housing Element and Task 16 of the 2024 Planning Division Work Plan, in addition to standard the standard provisions of SDBL, the proposed amendments also include adding an additional density bonus incentive for projects providing very low-, low-, and/or moderate-income households for special needs populations.

As a separate task, and consistent with Housing Element Program 15:, City staff are currently looking to add an additional "Zoning Incentive" program that would include additional incentives beyond what SDBL, which will be considered separately.

If the Planning Commission chooses to deny the proposed zoning amendments, the City's Zoning Ordinance will remain out of compliance with State law. Regardless if these zoning amendments are adopted, State law will supersede the City's Zoning Ordinance and the SDBL as amended in California Government Code Sections 65915 through 65918 will remain applicable to any project utilizing a density bonus.

Fiscal Impact

No fiscal impact is associated with the preparation of this staff report and accompanying ordinance.

Costs associated with revising the Zoning Ordinance, including staff time associated with updating to the local Density Bonus Ordinance, are normally funded through the City's General Fund. Furthermore, Planning Division staff utilized a model zoning amendment, ordinance, and staff report prepared by the Contra Costa County Housing Collaborative (also referred to as "C4") to reduce staff time associated with this effort. Adopting State law by reference may reduce future costs associated with monitoring and updating the Ordinance.

Environmental Review

The proposed ordinance is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. None of the circumstances described in CEQA Guidelines Section 15300.2 applies.

Public Noticing and Outreach

In accordance with Government Code Sections 65090 and 65091, on May 3, 2024, the City published a "Notice of Public Hearing" in the *Contra Costa News Register* and was posted at City Hall.

Attachments

- Attachment A – Draft Planning Commission Resolution No. 24-03
- Exhibit A – Draft Ordinance
- Attachment B – Strikethrough and Underline Version of Proposed Code Amendments

PLANNING COMMISSION RESOLUTION NO. 24-03

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARTINEZ
RECOMMENDING THE CITY COUNCIL APPROVE A ZONING TEXT AMENDMENT
TO AMEND THE MARTINEZ MUNICIPAL CODE BY: 1) AMENDING CHAPTER 22.04
(DEFINITIONS) TO ESTABLISH DEFINITIONS FOR “CONCESSIONS” AND
“WAIVERS” AND 2) REPEALING CHAPTER 22.57 (DENSITY BONUS) AND
ADDING CHAPTER 22.80 (DENSITY BONUS)**

WHEREAS, Density Bonus Law (Government Code Section 65915 et seq.) encourages developers to build affordable housing (e.g., very low-, low-, and moderate-income units) by requiring cities to grant a density bonus, concessions, incentives, and waivers of developments standards for projects that commit certain percentages of their units to affordable housing; and

WHEREAS, California Government Code Section 65915(a) requires that local governments adopt an ordinance that specifies how compliance with State Density Bonus law will be implemented; and

WHEREAS, Martinez Municipal Code (“MMC”) Chapter 22.57 contains regulations implementing the State Density Bonus Law; and

WHEREAS, this Ordinance amends Chapter 22.04 to establish definitions for “concessions” and “waivers” as they relate to State Density Bonus Law; and

WHEREAS, this Ordinance repeals Chapter 22.57 and adds Chapter 22.80 to adopt the State Density Bonus Law by reference. As amended by this Ordinance, MMC Chapter 22.80 will specify density bonuses and other affordable housing incentives required by State law (including but not limited to Government Code Section 65915 et seq.) will be available to applicants on the terms and conditions specified in State law; and

WHEREAS, adopting the State Density Bonus Law by reference will ensure the MMC remains current whenever the State Legislature amends the State Density Bonus Law; and

WHEREAS, the Planning Commission held a public hearing on the proposed Zoning Text Amendments on May 14, 2024, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the Planning Commission did hear and consider all said reports,

recommendations, and testimony herein above set forth and used its independent judgement to evaluate the project.

WHEREAS, the California Environmental Quality Act (“CEQA”), together with State Guidelines require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, pursuant to CEQA, staff is recommending the Planning Commission forward a recommendation to the City Council to find this project categorically exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities; and

NOW THEREFORE, the Planning Commission of the City of Martinez does hereby ordain as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Martinez does hereby recommend that the City Council adopt the Ordinance attached hereto as Exhibit A and incorporated herein by reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a Regular Meeting of said Commission held on the 14th day of May, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sean Trambley, Planning Commission Chair

ATTEST:

Michael P. Cass, Planning Manager

CHAPTER 22.04 DEFINITIONS

Concession, State Density Bonus Law.

"Concession" means modification(s) to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents associated with State Density Bonus Law projects. The number of required incentives is based on the percentage of affordable or senior units provided in the qualifying project consistent with California Government Code Sections 65915 through 95918. Concessions may include:

- A. reduced lot sizes and/or dimensions;
- B. reduced minimum setbacks;
- C. reduced minimum common and/or private open space requirements;
- D. increased maximum lot coverage;
- E. increased maximum building height and/or stories;
- F. reduced off-street parking standards, including the number and size of spaces such that no less is provided as stipulated in California Government Code Sections 65915 through 95918;
- G. reduced minimum building separation requirements;
- H. reduced street standards, including street widths;
- I. approval of mixed-use zoning if commercial, office, or other land uses where not otherwise permitted, will reduce the cost of the housing development, and if the commercial, office, or other land uses are compatible with the housing development and the existing or planned development in the area;
- J. deferred permit application fees;
- K. expedited or accelerated permitting process; and/or
- L. other regulatory incentives or concessions proposed by the applicant and approved by the review authority which result in identifiable cost reductions or avoidance.

Waiver, State Density Bonus Law.

"Waiver" means modification(s) to City development standard(s) that would physically prevent the construction of a State Density Bonus Law housing project at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, adverse impact on property listed in the California Register of Historical Resources, or would be contrary to the law. Waivers may include: decreased setbacks, increased floor area ratio, and/or waiver of hillside regulations. Waivers cannot generally be denied unless the reduction/modification of the development standard would cause an adverse impact on the health, safety, or physical environment that cannot be mitigated.

CHAPTER 22.5780 DENSITY BONUS

22.5780.010 Purpose.

The purpose of this Chapter is to provide for density bonuses and incentives to developers who comply with California Government Code Sections 65915 through 65918 (State Density Bonus Law). The purpose of this Article is to establish a program in accordance with California Government Code Section 65915 et seq. to provide both density increases and other incentives to encourage the creation of housing affordable to moderate-, low-, and very low-income households, seniors, and other qualifying households under State law.

22.57.020 Definitions.

Unless otherwise specified in this Chapter, the definitions found in State Density Bonus Law shall apply to the terms contained herein.

22.5780.030020 Applicability.

This Chapter shall apply to all zoning districts that permit housing at a prescribed density by the General Plan Land Use Designation and/or zoning district. Where the density allowed under the zoning district is inconsistent with the density allowed under the General Plan Land Use Designation, the Land Use Designation density shall prevail.

- A. General. All proposed housing developments that qualify under California Government Code Section 65915 for a density increase and other incentives, and any qualified land transfer under California Government Code Section 65915 shall be eligible to apply for a density bonus (including incentives and/or concessions) consistent with the requirements, provisions and obligations set forth in California Government Code Section 65915, as it may be amended from time to time.
- B. Compliance. The applicant shall comply with all requirements stated in California Government Code Sections 65915 through 65918. The requirements of California Government Code Sections 65915 through 65918, and any amendments thereto, shall prevail over any conflicting provision of this Code.
- C. Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under California Government Code Section 65915.
- D. Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of California Government Code Section 65915. Any changes to California Government Code Section 65915 shall be deemed to supersede and govern over any conflicting provisions contained herein. If any portion of this Article conflicts with State Density Bonus Law or other applicable State law, State law shall supersede this Section. Any ambiguities in this Section shall be interpreted to be consistent with State Density Bonus Law.
- E. Replacement Housing Requirement. Pursuant to California Government Code Section 65915(c)(3), an applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein.

22.5780.040030 State Density Bonus and Incentives Density Increase and Other Incentives.

A developer of a housing development in the City may be permitted a density bonus and incentives in accordance with the provisions of California Government Code Sections 65915 through 65918 (State Density Bonus Law).

- A. General. If a qualifying affordable housing project or land transfer/cash payment meets the criteria of California Government Code Section 65915 et seq., then the project shall be granted a density bonus, the amount of which shall be as specified in California Government Code Section 65915 et seq., and incentives or concessions also as described in California Government Code Section 65915 et seq.

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- B. Density Bonus Units. Except as otherwise required by California Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.
 - C. Special Needs Housing. Projects which propose to provide special needs housing (e.g., housing for seniors, the disabled, and/or disabled veterans) affordable to very-low, low-, and/or moderate-income households in perpetuity, may receive up to one additional incentive beyond what is specified in California Government Code Section 65915 et seq.
 - D. Market-Rate Senior Citizen Housing Developments. Market-rate senior citizen housing developments that qualify for a density bonus shall not receive any other incentives or concessions, unless California Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

22.80.040 Physical Constraints and Parking Waivers.

- A. Physical Constraints. Except as restricted by California Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:
 - 1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
 - 2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
 - 3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
 - 4. The waiver or reduction of the development standard would be contrary to state or federal law.
- B. Parking. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with California Government Code Section 65915(p), as that section may be amended from time to time.

22.5780.050 Application Requirements and Review.

- A. An application for a state density bonus, incentive or concession, waiver or modification of a development standard, or a revised parking standard in accordance with Section 22.57.040, shall be submitted with the first application for approval of a housing development and shall be processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the City and shall include, at a minimum, the following information: An application for a density increase or other incentives under this Chapter for a housing development shall be submitted in writing to the Planning Division to be processed concurrently with all other entitlements of the proposed housing development. The application for a housing development shall contain information sufficient to fully evaluate the request under the requirements of this Chapter, and in connection with the project for which the request is made, including, but not limited to, the following:
 - 1. A site plan showing the total number and location of all proposed housing units and the number and location of proposed housing units which qualify the housing development for density bonus housing units. Site plan, drawn to scale, including building footprints, driveway(s), and parking layout;

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- ~~2.~~ The manner in which the applicant shall satisfy the affordability requirements for the housing units which qualify the housing development for density bonus units.
 2. A brief written description of the proposed housing development;
 3. The zoning, general plan designations, and assessor's parcel number(s) of the project site;
 4. The total number of housing units and/or shared housing units (as defined in California Government Code Section 65915(o)(6)) proposed in the development project, including unit sizes and number of bedrooms;
 5. The total number of units proposed to be granted through the density bonus over and above the otherwise maximum density for the project site;
 6. The total number of units to be made affordable to or reserved for sale, or rental to, very low-, low-, or moderate-income households, or senior citizens, or other qualifying households;
 7. Calculations demonstrating the proposed project's consistency with applicable zoning density regulations and bonus percentages;
 - ~~38.~~ 38. A written description of any requested incentives, ~~and~~ concessions, waivers, or modification of development standards, or modified parking standards. For all incentives and concessions, except mixed-use development, the application shall include evidence deemed sufficient by the City that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. A concession or incentive must be used before requesting a waiver or reduction of a development standard. For waivers or modifications of development standards, the application shall include evidence deemed sufficient by the City that the waiver or modification is necessary to make the housing units economically feasible and that the development standard from which a waiver or modification is requested will have the effect of precluding the construction of the housing development at the densities to which the applicant is entitled pursuant to this Chapter and with the concessions and incentives permitted by this Chapter;
 9. The proposed method of ensuring the continued availability of the density bonus units, consistent with Section 22.80.060;
 410. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions pursuant to Government Code Section 65915 (g)(2)(A through H) are met; and
 - ~~511.~~ 511. If a density bonus or incentive or concession is requested for a child care facility pursuant to Government Code Section 65915 (h), then the application shall show the location and square footage of the child care facility and provide evidence that the community lacks adequate child care facilities.
- B. ~~Review and Consideration. An application for a density bonus, incentive or concession, waiver or modification of a development standard, or revised parking standard shall be considered and acted upon by the City body with review authority for the housing development. If a density bonus development project includes an entitlement that would otherwise require approval from the Zoning Administrator, Planning Commission, or City Council, the applicant's request for density bonus and associated waivers/concessions will be reviewed concurrently with the project and shall be publicly noticed as otherwise required. If the density bonus development project does not involve these review authorities and/or public notification, then 22.80.060 Density Bonus Housing Agreement the request under this Chapter shall be reviewed separately by the Community and Economic Development Director, or designee, without requiring a public hearing or public notification. The request shall be approved if the applicant complies with the provisions of California Government Code Section 65915 et seq.~~
- C. ~~Approval-Required Findings.~~ Before approving an application for a density bonus, incentive, ~~or~~ concession, ~~or~~ waiver, or modification of a development standard, the ~~approval~~ review authority shall affirmatively make the following findings:

-
1. If the density bonus is based all or in part on a donation of land, the conditions of Government Code Section 65915 (g)(2)(A through H) are met.
 2. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, that the conditions included in Government Code Section 65915 (h)(2)(A) and (B) are met.
 3. If the incentive or concession includes mixed use development, the finding included in Government Code Section 65915 (k)(2) are met.
 4. If a waiver or modification of a development standard is requested, then the ~~developer~~ applicant has demonstrated, for each requested waiver or modification, that the waiver or modification is necessary to make the housing units economically feasible and that the development standards from which a waiver or modification is requested will have the effect of precluding the construction of a housing development at the densities to which the applicant is entitled pursuant to this Chapter or with the concessions and incentives permitted by this Chapter. The economic feasibility analysis may be peer-reviewed by a consultant at the cost of the applicant.
- D. Concession or Incentive Denial. The ~~approval~~ review authority may deny a concession or incentive if it makes a written finding based upon substantial evidence of either of the following:
1. The concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this Chapter.
 2. The concession or incentive would have a specific adverse impact upon public health, ~~or~~ safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to ~~lower~~, very low, low, or moderate-income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
- E. Waiver or Modification Denial. The ~~approval~~ review authority may deny a waiver or modification of a development standard only if it makes a written finding based upon substantial evidence or either of the following:
1. The waiver or modification would have a specific adverse impact upon health, safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to ~~lower~~, very low, low, or moderate-income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
 2. The waiver or modification would have an adverse impact on any real property listed in the California Register of Historical Resources.
- F. Childcare Facilities Denial. If a density bonus or concession or incentive is based on the provision of child care facilities, then the ~~approval~~ review authority may deny the density bonus or concession or incentive if it finds, based on substantial evidence, that the City already has adequate child care facilities.

22.5780.060 Density Bonus Housing Agreement.

- A. Density Bonus Housing Agreement. An applicant requesting a density bonus shall agree to enter into an affordable housing agreement ("agreement") with the City in the City's standard form of agreement or otherwise approved to form by the City Attorney. Execution of the agreement shall be made a condition of approval for any discretionary planning permit for housing developments pursuant to this Chapter and shall be recorded as a restriction on ~~any~~ all parcels on which the housing units which qualify the housing development for a density bonus will be constructed.

-
- B. Recording of Agreement. The agreement shall be recorded prior to the final or parcel map approval, or, where the housing development does not include a map, prior to the issuance of a building permit.
- C. Contents of the Agreement. Each agreement shall include, but not be limited to, the following:
1. A description of the residential development, including whether the housing units which qualify the housing development for a density bonus will be rented or owner-occupied;
 2. The number, size and location of the housing units which qualify the housing development for a density bonus;
 3. Provisions and/or documents for resale restrictions, deeds of trust, right of first refusal or rental restrictions;
 4. Provisions for monitoring the ongoing affordability of the housing units which qualify the housing development for a density bonus, and the process for qualifying prospective resident households for income eligibility; and
 5. Any additional obligations relevant to ~~the~~ compliance with this Chapter.
- D. Owner-Occupied Agreements. The purchaser of ~~each~~ owner-occupied or rental housing units which qualified the housing development for a density bonus shall execute the City's standard form agreement, to be recorded against the parcel, and which includes such provisions as the City may require to ensure continued compliance with this Chapter.

Agreements for Child Care Facilities and Land Donations. Density bonus housing agreements for child care facilities and land dedications shall ensure continued compliance with all conditions included in Government Code Section 65915 (h)(2)(A) and (B) and Government Code Section 65915 (g)(2)(A through H), respectively.

TITLE 22 FOOTNOTES

1. ~~For statutory provisions pertaining to planning in general, see Gov. Code § 65000 et seq.; for provisions authorizing cities to regulate the use of land and buildings, see Gov. Code § 65850; for statutory provisions requiring a City to adopt a General Plan, see Gov. Code § 65300; for provisions regarding underground utilities see Ch. 13.28; for sign provisions, see Title 16, for environmental control, see Title 20.~~
2. ~~Flexibility provision permitting office and retail commercial to develop in C-R zones.~~

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ APPROVING A ZONING TEXT AMENDMENT TO AMEND THE MARTINEZ MUNICIPAL CODE BY: 1) AMENDING CHAPTER 22.04 (DEFINITIONS) TO ESTABLISH DEFINITIONS FOR “CONCESSIONS” AND “WAIVERS” AND 2) ESTABLISHING NEW AND AMENDING EXISTING REGULATIONS FOR CALIFORNIA STATE DENSITY BONUS LAW (“SDBL”) BY REPEALING CHAPTER 22.57 (DENSITY BONUS) AND ADDING CHAPTER 22.80 (DENSITY BONUS)

WHEREAS, Density Bonus Law (Government Code Section 65915 et seq.) encourages developers to build affordable housing (e.g., very low-, low-, and moderate-income units) by requiring cities to grant a density bonus, concessions, incentives, and waivers of developments standards for projects that commit certain percentages of their units to affordable housing; and

WHEREAS, California Government Code Section 65915(a) requires that local governments adopt an ordinance that specifies how compliance with State Density Bonus law will be implemented; and

WHEREAS, Martinez Municipal Code (“MMC”) Chapter 22.57 contains regulations implementing the State Density Bonus Law; and

WHEREAS, this Ordinance amends Chapter 22.04 to establish definitions for “concessions” and “waivers” as they relate to State Density Bonus Law;

WHEREAS, this Ordinance repeals Chapter 22.57 and adds Chapter 22.80 to adopt the State Density Bonus Law by reference. As amended by this Ordinance, MMC Chapter 22.80 will specify density bonuses and other affordable housing incentives required by State law (including but not limited to Government Code Section 65915 et seq.) will be available to applicants on the terms and conditions specified in State law; and

WHEREAS, adopting the State Density Bonus Law by reference will ensure the MMC remains current whenever the State Legislature amends the State Density Bonus Law; and

WHEREAS, on May 14, 2024, the Planning Commission held a duly noticed public hearing to consider the proposed Ordinance related to density bonus, received the staff report and staff presentation, received comments from the public and interested parties, and discussed the matter. Following the public hearing, the Planning Commission adopted Resolution No. 24-03 recommending the City

Council adopt the proposed Ordinance; and

WHEREAS, the City Council held a public hearing on the proposed Zoning Text Amendments on _____, at which time all interested parties had the opportunity to be heard; and

WHEREAS, proper notice of said hearing was given in all respects as required by law; and

WHEREAS, the City Council did hear and consider all said reports, recommendations and testimony herein above set forth and used its independent judgement to evaluate the project.

NOW THEREFORE, the City Council of the City of Martinez does hereby ordain as follows:

SECTION I.

Pursuant to MMC Section 22.46.020, the City Council hereby finds the Zoning Text Amendments are consistent with the General Plan 2035 and all applicable Specific Plans in that the amendments are necessary to comply with State law and are consistent with applicable land use regulations and development policies.

SECTION II.

The California Environmental Quality Act (“CEQA”), together with State Guidelines require that certain projects be reviewed for environmental impacts and that environmental documents be prepared. Pursuant to the CEQA, the City Council hereby finds the project statutorily exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, which is a Common Sense Exemption since the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. There is no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.

SECTION III.

The following definitions added to Chapter 22.04 (Definitions) of Title 22 (Zoning Ordinance) of the MMC:

Concession, State Density Bonus Law.

“Concession” means modification(s) to City regulatory or development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents associated with State Density Bonus Law projects. The number of required incentives is based on the percentage of affordable or senior units provided in the qualifying project consistent with California Government Code Sections 65915 through 95918. Concessions may include:

- A. reduced lot sizes and/or dimensions;
- B. reduced minimum setbacks;
- C. reduced minimum common and/or private open space requirements;
- D. increased maximum lot coverage;
- E. increased maximum building height and/or stories;
- F. reduced off-street parking standards, including the number and size of spaces such that no less is provided as stipulated in California Government Code Sections 65915 through 95918;
- G. reduced minimum building separation requirements;
- H. reduced street standards, including street widths;
- I. approval of mixed-use zoning if commercial, office, or other land uses where not otherwise permitted, will reduce the cost of the housing development, and if the commercial, office, or other land uses are compatible with the housing development and the existing or planned development in the area;
- J. deferred permit application fees;
- K. expedited or accelerated permitting process; and/or
- L. other regulatory incentives or concessions proposed by the applicant and approved by the review authority which result in identifiable cost reductions or avoidance.

Waiver, State Density Bonus Law.

“Waiver” means modification(s) to City development standards that would physically prevent the construction of a State Density Bonus Law housing project at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, adverse impact on property listed in the California Register of Historical Resources, or would be contrary to the law. waivers may include: decreased setbacks and/or increased floor area ratio and/or waiver of hillside regulations. Waivers cannot generally be denied unless the reduction/modification of the development standard would cause an adverse impact on the health, safety, or physical environment that cannot be mitigated.

SECTION IV.

Chapter 22.57 (Density Bonus) of Title 22 (Zoning Ordinance) of the MMC is hereby proposed to be repealed in its entirety.

SECTION V.

Chapter 22.80 (Density Bonus) of Title 22 (Zoning Ordinance) is hereby proposed to be added to the MMC:

CHAPTER 22.80 DENSITY BONUS

22.80.010 Purpose.

22.80.020 Applicability.

22.80.030 Density Increase and Other Incentives.

22.80.040 Physical Constraints and Parking Waivers.

22.80.050 Application Requirements and Review.

22.80.060 Density Bonus Housing Agreement.

22.80.010 Purpose.

The purpose of this Chapter is to establish a program in accordance with California Government Code Section 65915 et seq. to provide both density increases and other incentives to encourage the creation of housing affordable to moderate-, low-, and very low-income households, seniors, and other qualifying households under State law.

22.80.020 Applicability.

- A. **General.** All proposed housing developments that qualify under California Government Code Section 65915 for a density increase and other incentives, and any qualified land transfer under California Government Code Section 65915 shall be eligible to apply for a density bonus (including incentives and/or concessions) consistent with the requirements, provisions and obligations set forth in California Government Code Section 65915, as it may be amended from time to time.
- B. **Compliance.** The applicant shall comply with all requirements stated in California Government Code Sections 65915 through 65918. The requirements of California Government Code Sections 65915 through 65918, and any amendments thereto, shall prevail over any conflicting provision of this Code.
- C. **Excluded development.** An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under California Government Code Section 65915.
- D. **Interpretation.** The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of California Government Code Section 65915. Any changes to California Government Code Section

65915 shall be deemed to supersede and govern over any conflicting provisions contained herein. If any portion of this Article conflicts with State Density Bonus Law or other applicable State law, State law shall supersede this Section. Any ambiguities in this Section shall be interpreted to be consistent with State Density Bonus Law.

- E. **Replacement Housing Requirement.** Pursuant to California Government Code Section 65915(c)(3), an applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein.

22.80.030 Density Increase and Other Incentives.

- A. **General.** If a qualifying affordable housing project or land transfer/cash payment meets the criteria of California Government Code Section 65915 et seq., then the project shall be granted a density bonus, the amount of which shall be as specified in California Government Code Section 65915 et seq., and incentives or concessions also as described in California Government Code Section 65915 et seq.
- B. **Density Bonus Units.** Except as otherwise required by California Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.
- C. **Special Needs Housing.** Projects which propose to provide special needs housing (e.g., housing for seniors, the disabled, and/or disabled veterans) affordable to very-low, low-, and/or moderate-income households in perpetuity, may receive up to one additional incentive beyond what is specified in California Government Code Section 65915 et seq.
- D. **Market-Rate Senior Citizen Housing Developments.** Market-rate senior citizen housing developments that qualify for a density bonus shall not receive any other incentives or concessions, unless California Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

22.80.040 Physical Constraints and Parking Waivers.

- A. **Physical Constraints.** Except as restricted by California Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density

bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;
3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
4. The waiver or reduction of the development standard would be contrary to state or federal law.

B. **Parking.** The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with California Government Code Section 65915(p), as that section may be amended from time to time.

22.80.050 Application Requirements and Review.

- A. An application for a density increase or other incentives under this Chapter for a housing development shall be submitted in writing to the Planning Division to be processed concurrently with all other entitlements of the proposed housing development. The application for a housing development shall contain information sufficient to fully evaluate the request under the requirements of this Chapter, and in connection with the project for which the request is made, including, but not limited to, the following:
1. Site plan, drawn to scale, including building footprints, driveway(s), and parking layout;
 2. A brief written description of the proposed housing development;
 3. The zoning, general plan designations, and assessor's parcel number(s) of the project site;
 4. The total number of housing units and/or shared housing units (as defined in California Government Code Section 65915(o)(6)) proposed in the development project, including unit sizes and number of bedrooms;

5. The total number of units proposed to be granted through the density bonus over and above the otherwise maximum density for the project site;
 6. The total number of units to be made affordable to or reserved for sale, or rental to, very low-, low-, or moderate-income households, or senior citizens, or other qualifying households;
 7. Calculations demonstrating the proposed project's consistency with applicable zoning density regulations and bonus percentages;
 8. A written description of any requested incentives, concessions, waivers, or modification of development standards, or modified parking standards. For all incentives and concessions, except mixed-use development, the application shall include evidence deemed sufficient by the City that the requested incentives and concessions result in identifiable, financially sufficient, and actual cost reductions. For waivers or modifications of development standards, the application shall include evidence deemed sufficient by the City that the waiver or modification is necessary to make the housing units economically feasible and that the development standard from which a waiver or modification is requested will have the effect of precluding the construction of the housing development at the densities to which the applicant is entitled pursuant to this Chapter and with the concessions and incentives permitted by this Chapter; and
 9. The proposed method of ensuring the continued availability of the density bonus units, consistent with Section 22.80.060;
 10. If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the conditions pursuant to Government Code Section 65915 (g)(2)(A through H) are met; and
 11. If a density bonus or incentive or concession is requested for a childcare facility pursuant to Government Code Section 65915 (h), then the application shall show the location and square footage of the childcare facility and provide evidence that the community lacks adequate child care facilities.
- B. Review and Consideration.** If a density bonus development project includes an entitlement that would otherwise require approval from the Zoning Administrator, Planning Commission, or City Council, the applicant's request for density bonus and associated waivers/concessions will be reviewed concurrently with the project and shall be publicly noticed as otherwise required. If the density bonus development project does not involve these deciding bodies and/or public notification, then 22.80.060 Density Bonus Housing Agreement the request under this

Chapter shall be reviewed separately by the Community and Economic Development Director, or designee, without requiring a public hearing or public notification. The request shall be approved if the applicant complies with the provisions of California Government Code Section 65915 et seq.

C. **Required Findings.** Before approving an application for a density bonus, incentive, concession, waiver, or modification of a development standard, the deciding body shall affirmatively make the following findings:

1. If the density bonus is based all or in part on a donation of land, the conditions of Government Code Section 65915 (g)(2)(A through H) are met.
2. If the density bonus, incentive, or concession is based all or in part on the inclusion of a childcare facility, that the conditions included in Government Code Section 65915 (h)(2)(A) and (B) are met.
3. If the incentive or concession includes mixed use development, the finding included in Government Code Section 65915 (k)(2) are met.
4. If a waiver or modification of a development standard is requested, then the applicant has demonstrated, for each requested waiver or modification, that the waiver or modification is necessary to make the housing units economically feasible and that the development standards from which a waiver or modification is requested will have the effect of precluding the construction of a housing development at the densities to which the applicant is entitled pursuant to this Chapter or with the concessions and incentives permitted by this Chapter. The economic feasibility analysis may be peer-reviewed by a consultant at the cost of the applicant.

D. **Concession or Incentive Denial.** The deciding body may deny a concession or incentive if it makes a written finding based upon substantial evidence of either of the following:

1. The concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this Chapter.
2. The concession or incentive would have a specific adverse impact upon public health, safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to very low-, low-, or moderate-income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

- E. **Waiver or Modification Denial.** The deciding body may deny a waiver or modification of a development standard only if it makes a written finding based upon substantial evidence or either of the following:
1. The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to very low-, low-, or moderate-income households. For purposes of this subsection, "specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.
 2. The waiver or modification would have an adverse impact on any real property listed in the California Register of Historical Resources.
- F. **Childcare Facilities Denial.** If a density bonus or concession or incentive is based on the provision of childcare facilities, then the deciding body may deny the density bonus or concession or incentive if it finds, based on substantial evidence, that the City already has adequate childcare facilities.

22.80.060 Density Bonus Housing Agreement.

- A. **Density Bonus Housing Agreement.** An applicant requesting a density bonus shall agree to enter into an affordable housing agreement ("agreement") with the City in the City's standard form of agreement or otherwise approved to form by the City Attorney. Execution of the agreement shall be made a condition of approval for any discretionary planning permit for housing developments pursuant to this Chapter and shall be recorded as a restriction on all parcels on which the housing units which qualify the housing development for a density bonus will be constructed.
- B. **Recording of Agreement.** The agreement shall be recorded prior to the final or parcel map approval, or, where the housing development does not include a map, prior to the issuance of a building permit.
- C. **Contents of the Agreement.** Each agreement shall include, but not be limited to, the following:
1. A description of the residential development, including whether the housing units which qualify the housing development for a density bonus will be rented or owner-occupied;
 2. The number, size, and location of the housing units which qualify the housing development for a density bonus;

3. Provisions and/or documents for resale restrictions, deeds of trust, right of first refusal, or rental restrictions;
4. Provisions for monitoring the ongoing affordability of the housing units which qualify the housing development for a density bonus, and the process for qualifying prospective resident households for income eligibility; and
5. Any additional obligations relevant to compliance with this Chapter.

D. **Owner-Occupied Agreements.** The purchaser of owner-occupied or rental housing units which qualified the housing development for a density bonus shall execute the City's standard form agreement, to be recorded against the parcel, and which includes such provisions as the City may require to ensure continued compliance with this Chapter.

Agreements for Child Care Facilities and Land Donations. Density bonus housing agreements for child care facilities and land dedications shall ensure continued compliance with all conditions included in Government Code Section 65915 (h)(2)(A) and (B) and Government Code Section 65915 (g)(2)(A through H), respectively.

SECTION V. SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Martinez hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION VI. PUBLICATION AND EFFECTIVE DATE

This ordinance shall become effective thirty (30) days after the date of adoption.

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

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

City of Martinez.

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

APPROVED

BRIANNE ZORN
MAYOR

ATTEST

KAT GALILEO
ASSISTANT CITY CLERK

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance that was duly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the ____ day of ____, 2024, and adopted at a regular meeting of the City Council of the City of Martinez, held on the ____ day of ____, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ORDINANCE NO. ____

RICHARD G. HERNANDEZ
CITY CLERK

Approved as to form:

TERRI HIGHSMITH
CITY ATTORNEY



May 13, 2024

**City of Martinez
525 Henrietta Street
Martinez, CA 94553**

By Email: mcass@cityofmartinez.org

CC: dutyplanner@cityofmartinez.org; thighsmith@chwlaw.us

Re: Proposed Amendment to the City's Density Bonus Ordinance

Dear Martinez Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning the single item on the regular agenda for the May 14, 2024 Planning Commission meeting, a proposed update to the City's ordinance implementing the California State Density Bonus Law (Gov. Code, § 65915; the "DBL"). CalHDF writes to flag a number of issues with the ordinance. CalHDF understands that the DBL will prevail over conflicting sections of the local ordinance (and the ordinance explicitly acknowledges this), but the City would nonetheless do well to ensure its ordinance stays within the bounds of what the DBL allows: that ensures that staff, applicants, and other interested parties have an accurate understanding of how density bonus applications will play out.

Applicant-Funded Review of Economic Feasibility Analysis

The proposed amendment to current section 22.57.050 (section 22.80.050 as amended) subsection (C)(4) regarding peer-review of economic feasibility analyses does not comport with the DBL. The amendment would allow the City to charge an applicant for a density bonus project for the cost of hiring a consultant to review the applicant's economic feasibility analysis for a requested waiver or modification. The DBL, however, makes no provision for such a review, much less provision for local agencies to offload the costs of such a review onto the applicant. (See DBL at subd. (e)(1).) And although waivers and reductions of development standards are distinct from concessions or incentives, the DBL's instruction that the City bears the burden of proof in rejecting requested concessions or incentives (*id.* at subd. (d)(4)) strongly suggests it is the *City's* duty, not the applicant's, to shoulder the costs of any effort to rebut economic analyses submitted by the developer.

The City should delete the proposed language on this point from current section 22.57.050 (section 22.80.050 as amended).

Criteria for Denying Concessions or Incentives

CalHDF also notes that, although it is not part of the proposed amendments, current section 22.57.050 (section 22.80.050 as amended) subsection (D)(1) does not comply with the DBL. This section allows the City to deny a concession or incentive requested under the DBL if “[t]he concession or incentive is not required to provide for affordable rents or affordable housing costs as required by this Chapter.” That is not a permissible basis to deny a concession or incentive. The DBL, subdivision (d)(1), allows the City to deny a concession or incentive only in one of the following three cases:

- (A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
- (B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or 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-income and moderate-income households.
- (C) The concession or incentive would be contrary to state or federal law.

The current language in the City’s local code does not fall into one of those categories. It comes closest to (A), but even there there is a difference between the standard “not required to provide for affordable rents or affordable housing costs,” on the one hand, and “does not result in identifiable and actual cost reductions.”

The Planning Commission should remove the problem language or edit it to fall in line with the DBL.

Additional Incentives for Special Needs Housing

CalHDF is pleased to see the City implementing program 15 from its housing element by adding subsection (C) to current section 22.57.040 (section 22.80.030 as amended). Offering special needs affordable housing projects an additional incentive is a good step towards ensuring such projects will be built in Martinez. These projects are badly needed in Martinez, the Bay Area, and California more broadly, and CalHDF applauds the City for its efforts to encourage them.



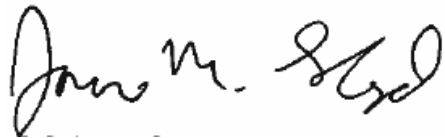
CalHDF is pleased to see Martinez updating its local DBL implementing ordinance and especially pleased to see amendments to the ordinance that are designed to encourage special needs affordable housing. We urge the Planning Commission to further improve the ordinance by making the changes described above.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,



Dylan Casey
CalHDF Executive Director



James M. Lloyd
CalHDF Director of Planning and Investigations