



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, October 27, 2009
Hoyer Hall, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Richardson to report at the City Council meeting on November 3, 2009.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of October 13, 2009.

Public Hearings

- 3A. **ZOA 03-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code to allow manufactured homes within the City of Clayton, consistent with the requirements of State law.

Possible Action: Approve Resolution No. 04-09

- 3B. **ZOA 04-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code for the purpose of implementing the requirements of Senate Bill 1818 related to granting density bonuses and related incentives to support the construction of affordable housing references and to clarify the purpose of this Section.

Possible Action: Approve Resolution No. 05-09

Old Business

- 4. None.

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New Business

5. None.

Communications

- 6A. Staff.
6B. Commission.

Adjournment

7. The next meeting of the Planning Commission is scheduled for **Tuesday, November 10, 2009.**

Most Planning Commission decisions are appealable to the City Council within ten (10) calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in oral testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present. Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
City of Clayton Planning Commission Meeting
Tuesday, October 13, 2009

Call to Order

Chair Bob Armstrong called the meeting to order at 7:00 p.m. at Endeavor Hall, 6008 Center Street, Clayton.

Present: Chair Bob Armstrong, Vice Chair Sandra Johnson, Commissioner Ted Meriam,
Commissioner Dan Richardson
Absent: Commissioner Tuija Catalano
Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

- 1A. Review of agenda items.
- 1B. Chair Armstrong to report at the City Council meeting on October 20, 2009.

Public Comment

None.

Approval of Minutes

- 2. Approval of minutes from the meeting of September 8, 2009.

Chair Armstrong moved and Vice Chair Johnson seconded a motion to approve the minutes from the meeting of September 8, 2009, as amended. The motion passed 4-0.

Public Hearings

- 3A. **ZOA 03-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code to allow manufactured homes within the City of Clayton, consistent with the requirements of State law.

Director Woltering presented the staff report.

Planning Commission questions and comments included:

- Is the Clayton Regency Mobile Home Park located in Clayton? Director Woltering responded no, the Clayton Regency Mobile Home Park is located in the unincorporated area of Contra Costa County east of Clayton. He clarified that mobile homes not on permanent foundations like that in the Clayton Regency Mobile Home Park are not the subject of this proposed ordinance. Manufactured home or mobile homes on permanent foundations are the subject of this proposed ordinance.
- We want to ensure that the design of manufactured homes are compatible with existing single-family residences within Clayton. Director Woltering indicated that design features such as foundations and standard-depth eaves would be required to enhance the appearance of manufactured homes and assure architectural integration with surrounding "stick-built" residences.
- I saw a manufactured home being constructed in Sonoma that was beautifully designed.
- Manufactured homes being built off-site offer economies of scale and, therefore, are less expensive to build.
- Allowing manufactured homes is a method of providing affordable housing within the City.

- We should require that the permanent foundations of manufactured homes interface with the home in a similar fashion as a “stick-built” residence.
- We should ensure that the garage component of manufactured homes looks integrated with the home similar to garages on surrounding “stick-built” residences.
- The manufactured home should always be built to blend with the design character of the neighborhood that it is located within.
- All walkways, driveways, flatwork, hardscaping, and landscaping located on the property of a manufactured home should be of a quality design and have a natural visual flow that is balanced with the design of the home.
- The attachment of all utilities and necessary mechanical appurtenances to the manufactured home should always appear integrated and visually consistent with homes in the vicinity.
- If the manufactured home is architecturally compatible with the surrounding residences and utilizes a permanent foundation, it would be beneficial to property owners since there is a cost savings involved with construction of such a home.
- It would be a good idea to specify design standards if the manufactured home is proposed for a location within a historical district that is regulated by codified architectural requirements.
- Our manufactured housing code needs to address varied situations as a property owner wanting to develop a solitary in-fill lot or a manufactured housing subdivision.
- Manufactured housing should be prohibited in the Town Center Specific Plan area.
- We want to avoid skirting so that the manufactured home looks as similar to a “stick-built” home as possible.
- By consensus, the Commission directed staff to prepare a draft ordinance for the Commission for recommendation to the City Council.

3B. **ZOA 04-09, Municipal Code Amendment, City of Clayton.** A public hearing regarding possible amendments to the Clayton Municipal Code for the purpose of implementing the requirements of Senate Bill 1818 related to granting density bonuses and related incentives to support the construction of affordable housing references and to clarify the purpose of this Section.

Director Woltering presented the staff report.

Planning Commission questions and comments included:

- I have no problem with the intent of the suggested amendments; however, I think we should removed the word “shall” in the sample Section 10-19.130 under Specified Housing Units. The City should have more control of what concessions are offered.
- At what point do the level of concessions begin to erode the development quality of the area? Director Woltering responded it is a challenge to achieve affordability goals with the density bonuses and concessions, while blending from a design and quality perspective surrounding existing homes.
- Can we write our own concessions or are the concessions dictated by the State? Director Woltering indicated that the City may write its own concessions.
- A property in town that could have a density bonus is the Stanley property behind the Post Office. Director Woltering indicated that, given the Stanley property’s land use designation which allows for 15 dwelling units per acre, the density bonus would allow them to build 20 or 21 units on the 1.11-acre site.
- My concern is the density bonus law allows builders to extract excessive concessions from cities.

- Is there a chance that allowing a 35% concession would allow the developer to construct a building three stories tall? Director Woltering indicated that the developer would have to amend the Municipal Code to build a three-story structure, or exceeding building heights would have to be offered as a concession.
- I feel as if these concessions are uncompensated takeaways from the City.
- Can you relocate affordable housing units outside the City? Director Woltering answered "no".
- Development standards can be onerous, so a piece of land will remain undeveloped. As a result, it can be useful to offer concessions and incentives such as reduced setbacks, etc.
- Staff should compile an inventory of vacant land and affordable housing opportunity sites. Commission and staff agreed that existing inventory information in the Draft Clayton 2009-2014 Housing Element Update would be sufficient to meet this information request. Director Woltering added that this information would be provided to the Commissioners at the next meeting.

Old Business

4. None.

New Business

5. None.

Communications

6A. Staff.

Director Woltering indicated the following:

- Regarding the fire at the Hurd Ranch property, a cultural resource evaluation document is being prepared for the fire-damaged primary residence on the property prior to its demolition and removal and that this information would be integrated into the environmental work that would be done for the subdivision.
- The City Council formally adopted the Building Height Restriction amendment, which the Planning Commission recommended for approval, at its meeting of October 6, 2009.

6B. Commission.

Chair Armstrong distributed information regarding the Contra Costa Countywide Program Review that he had received at the TRANSPAC meeting.

Adjournment

7. The meeting was adjourned at 8:49 p.m.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Bob Armstrong
Chair

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PLANNING COMMISSION STAFF REPORT

Meeting Date: October 27, 2009

From: Milan Sikela, Jr. *MS*
Assistant Planner

Subject: Amendments to the Clayton Municipal Code (ZOA 03-09) to Allow Manufactured Homes Within the City of Clayton

BACKGROUND AND DISCUSSION

At its meeting of October 13, 2009, the Planning Commission held a study session to review possible amendments to the Clayton Municipal Code to allow for manufactured housing within Clayton. In accordance with State law, these amendments would allow for the siting and permit process involved with construction of a manufactured home to be processed in the same manner as for a “stick-built” residence. During the October 13th meeting, the Commission provided the following direction:

- We want to ensure that the design of manufactured homes are compatible with existing single-family residences within Clayton.
- We should require that the permanent foundations of manufactured homes interface with the home in a similar fashion as a “stick-built” residence.
- The manufactured home should always be built to blend with the design character of the neighborhood that it is located within.
- All walkways, driveways, flatwork, hardscaping, and landscaping located on the property of a manufactured home should be of a quality design and have a natural visual flow that is balanced with the design of the home.
- It would be a good idea to specify design standards if the manufactured home is proposed for a location within a historic district that is regulated by codified architectural requirements.
- Manufactured housing should be prohibited in the Town Center Specific Plan area.
- We want to avoid skirting so that the manufactured home looks as similar to a “stick-built” home as possible.

Additionally, staff has also provided draft wording that allows the Community Development Director to refer a manufactured home to the Planning Commission if the Director believes that the structure may not be compatible with the surrounding existing structures in the neighborhood.

Staff has contacted the Contra Costa County Building Inspection Department and obtained a copy of Section 84-68.1602 of the Contra Costa County Code which addresses permanent mobile homes (see **Attachment A**). Staff has incorporated components of the County wording into the text of the proposed amendment. Furthermore, staff consulted with the City Engineer and is proposing wording to assure that the fascia of the manufactured home is integrated with the require permanent foundation to be similar in appearance to a “stick-built” home.

RECOMMENDATION

Staff recommends that the Planning Commission approve Resolution No. 04-09, which recommends City Council approval of an ordinance to:

- Amend Section 17.04.138 of the Clayton Municipal Code to provide a definition for “Manufactured Homes/Housing” and remove the definition for “Mixed Use”;
- Add Section 17.04.139 to the Clayton Municipal Code to relocate the definition for “Mixed Use”;
- Add Section 17.36.078 to the Clayton Municipal Code to address manufactured homes/housing; and
- Add Section 17.44.040.H to reference the standards in Section 17.36.078.

ATTACHMENTS

- A Section 84-68.1602 of the Contra Costa County Code [excerpt]
- B Clayton Planning Commission Resolution 04-09 with draft ordinance

ZOA\2009\03-09.sr1

ATTACHMENT A

Article 84-68.16. Permanent Use**84-68.1602 Permanent mobile homes.**

Mobile homes may be located, maintained and used for human habitation by building permit in all single-family residential districts (R-) and all agricultural districts (A-) when the mobile home unit complies with the following:

- (1) It is to be occupied only as a principal residence on the lot;
- (2) It meets all development standards of the applicable zoning district;
- (3) It is certified under the National Mobile H Construction and Safety Act of 1974 and any subsequent revisions;
- (4) It is installed on a permanent foundation system approved by the building inspection department of Contra Costa County;
- (5) It is covered with an exterior material customarily used in new conventional single-family residential structures in the surrounding area;
- (6) The exterior covering material must extend to the ground consistent with the most recent county-adopted Uniform Building Code. If a solid concrete or masonry perimeter foundation is used, the covering material need not extend below the top of the foundation. No conventional mobile home skirting shall be allowed;
- (7) The roofing material is of a material customarily used in new, conventional single-family residential structures in the surrounding area;
- (8) The roof has eave and gable overhangs;
- (9) The covering material of the garage or carport is the same as used on the mobile home unit;
- (10) The roof overhangs, siding and roofing material have been approved by the zoning administrator. The exterior materials must be found compatible with neighboring residences.

(Ords. 92-65 § 2 [former § 84-68.808], 87-22 § 3, 87-3 § 2, 8138 § 2 [former § 84-68.807]: Govt. C. § 65852-3).

**CITY OF CLAYTON PLANNING COMMISSION
RESOLUTION NO. 04-09**

**AMENDMENT OF CHAPTER 17.36 (GENERAL REGULATIONS) TO ADD
SECTION 17.36.078 TO ALLOW MANUFACTURED HOUSING ON LOTS WHERE
SINGLE-FAMILY RESIDENTIAL HOUSING IS ALLOWED,
AN AMENDMENT OF CHAPTER 17.44 (SITE PLAN REVIEW) TO ADD SECTION
17.44.040.H TO SPECIFY DESIGN STANDARDS FOR MANUFACTURED HOUSING,
AND AN AMENDMENT OF CHAPTER 17.04 (DEFINITIONS) TO ADD SECTION
17.04.138 TO PROVIDE A DEFINITION FOR MANUFACTURED HOMES/HOUSING
(ZOA 03-09)**

Whereas, the Planning Commission held a duly-noticed study session on October 13, 2009 to review the proposed amendments to the Municipal Code to allow for manufactured homes/housing in Clayton; and

Whereas, the Planning Commission held a duly-noticed public hearing on October 23, 2009 on the amendment to Section 17.04.138 and additions of Sections 17.04.139, 17.36.078, and 17.44.040.H of the Municipal Code; and

Whereas, the Planning Commission considered the public testimony and staff reports received at the October 23, 2009 meeting; and

Whereas, the amendment to Section 17.04.138 and additions of Sections 17.04.139, 17.36.078, and 17.44.040.H of the Municipal Code are exempt from the California Environmental Quality Act (CEQA) in accordance with Sections 15305 of the CEQA Guidelines.

Now, Therefore, Be it Resolved That:

Section 1. The Planning Commission determines that the proposed amendments to the Municipal Code described in the **Attachment** would be in general conformance with the General Plan, including any affected implementation programs, and would be in the public interest as well as support the public necessity, convenience, and general welfare.

Section 2. The Planning Commission recommends that the City Council approve the proposed amendments of the Clayton Municipal Code related to allowing manufactured homes/housing in Clayton.

Adopted by the Planning Commission on _____.

Resolution No. 03-09

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APPROVED

ATTEST

Bob Armstrong
Chair

David Woltering, AICP
Community Development Director

Attachment: Draft ordinance for amending Section 17.04.138 and adding Sections 17.04.139, 17.36.078, and 17.44.040.H of the Municipal Code

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ORDINANCE NO. 425

AMENDMENT OF CHAPTER 17.36 (GENERAL REGULATIONS) TO ADD SECTION 17.36.078 TO ALLOW MANUFACTURED HOUSING ON LOTS WHERE SINGLE-FAMILY RESIDENTIAL HOUSING IS ALLOWED, AN AMENDMENT OF CHAPTER 17.44 (SITE PLAN REVIEW) TO ADD SECTION 17.44.040.H TO SPECIFY DESIGN STANDARDS FOR MANUFACTURED HOUSING, AND AN AMENDMENT OF CHAPTER 17.04 (DEFINITIONS) TO ADD SECTION 17.04.138 TO PROVIDE A DEFINITION FOR MANUFACTURED HOMES/HOUSING

(ZOA 03-09)

**THE CITY COUNCIL
City of Clayton, California**

THE CITY COUNCIL OF THE CITY OF CLAYTON FINDS AS FOLLOWS:

WHEREAS, the Clayton Municipal Code does not address manufactured homes/housing; and

WHEREAS, State law required that the City of Clayton allow for manufactured homes/housing to be constructed within the City; and

WHEREAS, Section 17.04.138 of the Municipal Code has been modified to provide a definition for "Manufactured Homes/Housing"; and

WHEREAS, Section 17.04.139 of the Municipal Code has been added to relocate the definition for "Mixed Use" to maintain the alphabetical order of the defined terms; and

WHEREAS, Section 17.36.078 of the Municipal Code has been added to provide standards for manufactured homes/housing; and

WHEREAS, Section 17.44.040.H of the Municipal Code has been added to provide a reference to the standards in Section 17.36.078; and

WHEREAS, the Planning Commission held a duly-noted public hearing on October 27, 2009 to address manufactured housing/homes in the Municipal Code; determined that these amendments of the Municipal Code involve minor alterations of land use limitations which would not result in any changes in land use or density and would qualify for categorical exemptions from the California Environmental Quality Act (CEQA) in accordance with Section 15305 of the State CEQA Guidelines; determined that these amendments would be in conformance with the General Plan; determined that the public necessity, convenience, and general welfare would require adoption of these amendment; and recommended City Council approval of these amendment; and

WHEREAS, on November __, 2009 and December __, 2009, the City Council held duly-noticed public hearings and gave due consideration to all testimony, comments, and documents received; and

WHEREAS, the City Council determined that the amendment of the Municipal Code would not result in any changes in land use or density and would qualify for categorical exemptions from the California Environmental Quality Act (CEQA) in accordance with Section 15305 of the State CEQA Guidelines; and

WHEREAS, the City Council determined that the following amendment would be in general conformance with the General Plan; and

WHEREAS, the City Council determined that the public necessity, convenience, and general welfare would require adoption of the amendment; and

WHEREAS, there is no evidence that the amendments will have the potential for any individual or cumulative adverse effects on fish and wildlife resources or their habitat, as defined in Section 711.2 of the Fish and Game Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 17.04.138 of the Municipal Code is amended to read as follows:

“17.04.138 Manufactured Homes/Housing. “Manufactured Homes/Housing” means single-family dwellings transportable in one or more sections constructed to a federally preemptive standard.”

SECTION 2. Section 17.04.139 of the Municipal Code is added to read as follows:

“17.04.139 Mixed Use. “Mixed Use” means properties on which various uses, such as residential, commercial, or institutional, are combined in a single building or on a single site (including contiguous lots) in a development project with significant functional interrelationships and an integrated physical design. (Ord. 402, 2007)”

SECTION 3. Section 17.36.020 of the Municipal Code is amended to read as follows:

“17.36.078 Standards for Manufactured Homes/Housing.

- A. Manufactured Homes/Housing including Mobilehomes On A Permanent Foundation System. Mobilehomes eligible to be placed on individual lots where single-family residential units are allowed are those constructed after September 15, 1971, with an insignia of approval from the California Department of Housing and Community Development or constructed after July 1, 1976, with an insignia of approval from the U.S. Department of Housing and Urban Development, and which have not been altered in violation of applicable codes. Mobilehomes placed on a permanent foundation system on individual lots where single-family residential units are allowed shall be subject to all applicable provisions of this Title 17, including those provisions that would otherwise be applicable to single-family stick-built residential units. These eligible mobilehomes shall have a minimum width of twenty feet, and shall comply with the following standards:
1. Covered parking and storage buildings shall have the same architectural treatment as the main structure.
 2. Siding and roofing materials shall be compatible with the surrounding architecture.

3. Eaves shall be extended to provide appropriate solar screening, shadowing interest, depth articulation, and to be compatible with adjoining architecture.
4. Exterior fascia shall extend down and be secured to the required permanent foundation system in a manner visually similar to a stick-built home.
5. Exterior appearance shall blend architecturally with the design character of structures on adjacent properties.
6. All walkways, driveways, flatwork, hardscaping, and landscaping located on the property of a manufactured home should be of a quality design and have a natural visual flow that is balanced with the design of the home.
7. Skirting is prohibited.
8. Manufactured homes/housing are prohibited in the Town Center Specific Plan area.
9. If a manufactured home is proposed for construction in a manner that, in the judgement of the Community Development Director, may not comply with the intent of this Section or may not comply with Standards of Review listed in Section 17.44.040, the Director shall require the structure or building to be subject to a Planning Commission Site Plan Review Permit review and approval.”

Mobilehomes on permanent foundation systems in compliance with this part may be placed on lots zoned for single-family residential uses, except that no mobilehomes shall be permitted on non-graded hillside lots exceeding ten (10) percent grade or split-level graded lots.

- B. Mobilehomes Having No Permanent Foundation System. A mobilehome having no permanent foundation system shall be placed in a mobile home park. Mobilehome parks shall meet the standards and conditions of the mobilehome park standards, as adopted by the City Council.
- C. Manufactured Homes and the National Register of Historic Places. Any building, structured, or other object having a special character or special historical interest or value which is listed on the National Register of Historic Places shall be exempt from restrictions on architectural review requirements for manufactured homes as allowed under State Government Code Section 65852.3(b). Manufactured homes in such locations shall be subject to all applicable City design review standards.”

SECTION 4. Section 17.44.040.H of the Municipal Code is added to read as follows:

- “H. Design standards for manufactured housing/homes shall be in accordance with Section 17.36.078 of the Municipal Code.”

SECTION 5. If any provision of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinance and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on [month] [day], 2009.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on [month] [day], 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

Julie K. Pierce, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Dan Adams, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on [month] [day], 2009, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on [month] [day], 2009.

PLANNING COMMISSION STAFF REPORT

Meeting Date: October 27, 2009

From: David Woltering, Community Development Director 

Subject: Amendments to the Clayton Municipal Code (ZOA 04-09) to Implement SB 1818, California's Density Bonus Law

BACKGROUND

At its October 13, 2009 meeting, the Planning Commission held a public hearing for the purpose of reviewing requirements of California Senate Bill (SB)1818, the density bonus law, with the intent of preparing and recommending to the City Council a local ordinance to formally implement this law. The basic intent of SB 1818 is to provide increased support for the construction of affordable housing in California. Prior to this law becoming effective on January 1, 2005, density bonuses up to 25% were available to developers in this State when 10%-20% of the housing units included in a proposed project were affordable to targeted household income groups. SB 1818 lowers the thresholds for eligibility for density bonuses, increases the maximum percentage of possible bonus to 35%, increases the number of incentives that local communities must offer to qualified development projects, and offers a land donation consideration, all as measures to increase the opportunity for the construction of affordable housing in California. A more detailed summary of the provisions of SB 1818 follows immediately below.

Triggers

Density bonuses of 20-35% are required for setting aside the following for a minimum of 30 years:

- 10% of housing units for lower income households;
- 5% of housing units for very low income households; and,
- 10% of a condominium project for moderate income or senior citizen development.

Number of Concessions or Incentives Required

- One (1) for 10% dedicated to low- or moderate income households, or 5% to very low income households;
- Two (2) for projects that dedicate 20% to low- or moderate income households, or 10% to very low income households; and,
- Three (3) for projects with 30% dedicated to low- or moderate income households, or 15% to very low income households.

Additional Provisions

- Applicants who donate at least 10% of their land to a city before the approval date of their development are entitled to 15-35% density bonus increase, subject to conditions; and,
- When a child care facility is involved, applicants will be entitled to matching square footage increase or a concession that contributes to the construction of such a facility, unless the city concludes adequate childcare facilities already exist.

Little Discretion for City to Deny

- Concessions shall be granted unless it is found that concessions are not required to provide affordable housing or the concession would have an adverse impact on public health or safety;
- Local bodies may not impose development standards that would preclude a development under these amendments absent a showing of a specified adverse impact; and,
- Denial of requested bonuses can result in a legal challenge by an applicant.

Ramifications on General Plan

- The granting of concessions shall not be interpreted to require general plan or similar amendments. All cities and counties are required to adopt an ordinance that specifies how they will comply with SB 1818 requirement.

DISCUSSION

At the October 13th Planning Commission public hearing on this matter, staff reviewed the requirements of SB 1818 with the Commission and received Commissioner comments. Commissioners acknowledged that various developer objectives, such as attempting to produce certain housing types to reach certain market segments and working with a property's physical constraints, often are reasons for them for not seeking the maximum bonuses or incentives that may be available. Commissioners also acknowledged that the Clayton community has a relatively small amount of developable land available. Consequently, it was not envisioned that, while the intent of SB 1818 to facilitate the construction of more affordable housing would have some benefit, the number of actual affordable units developed as a result of this law would likely not be substantial in Clayton. Commissioners requested that staff offer a variety of concessions to select from to recommend placing in the ordinance. Staff will provide a listing of specific concessions to consider at the meeting on October 27th. Finally, the Commission requested that staff provide a description of the possible land supply for affordable housing from the Draft 2009 Clayton Housing Element that is currently being reviewed by the State Department of Housing and Community Development (HCD). Staff has attached pages 71-80 from the Draft Housing Element that is under review to provide that information.

RECOMMENDATION

Staff recommends that the Commission review and provide comments only on the attached Draft Ordinance No. 426 at this public hearing. These materials are concurrently being forward to the City Attorney for review and comment. The implementation of SB 1818 is complex and will require advice and thorough review by the City Attorney before a formal action by the Planning Commission.

ATTACHMENTS

- A Resolution No.05-09 with Attached Draft Ordinance No. 426
- B Excerpted Pages 71-80 from the City of Clayton 2009-2014 Housing Element Update, dated June, 2009

ZOA\2009\04-09.sr1

**CITY OF CLAYTON PLANNING COMMISSION
RESOLUTION NO. 05-09**

**AMENDMENT OF TITLE 17 OF THE MUNICIPAL CODE TO ADD CHAPTER 17.90
DENSITY BONUS TO IMPLEMENT SB 1818, THE STATE DENSITY BONUS LAW
(ZOA 04-09)**

Whereas, the Planning Commission held duly-noticed public hearings on October 13, and October 27, 2009 to consider amendments to the Municipal Code to implement pertinent provisions and requirements of State Senate Bill (SB) 1818 in accordance with State law; and

Whereas, the Planning Commission considered all relevant information, including staff reports background information, and public testimony; and

Whereas, at the October 13, 2009 Planning Commission public hearing, the Commission directed staff to prepare and ordinance amendment to modify the Municipal Code to implement pertinent provisions and requirements of SB1818 in accordance with State law; and

Whereas, based on the direction received from the Planning Commission at its October 13, 2009 public hearing regarding this matter, staff prepared Ordinance No. 426 to implement locally pertinent requirements of SB 1818; and

Whereas, the proposed amendments to the Municipal Code in Ordinance No. 426 are exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15283 of the CEQA Guidelines; and

Now, Therefore, Be it Resolved That:

Section 1. The Planning Commission determines that the proposed amendments of the Clayton Municipal Code that implement SB 1818, described in the **Attachment** (Ordinance No. 426) would be in general conformance with the General Plan, including any affected implementation programs, and would be in the public interest as well as support the public necessity, convenience, and general welfare.

Section 2. The Planning Commission recommends that the City Council approve Ordinance No. 426 and associated proposed amendments to the Clayton Municipal Code to allow the local implementation of SB 1818 in accordance with State law.

Resolution No. 05-09

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Adopted by the Planning Commission on _____.

APPROVED

ATTEST

Bob Armstrong
Chair

David Woltering, AICP
Community Development Director

Attachment: Draft Ordinance No. 426.

P\ng Comm\Resolutions\2009\05-09

ORDINANCE NO. 426

AMENDMENT OF TITLE 17 OF THE MUNICIPAL CODE TO ADD CHAPTER 17.90 DENSITY BONUS TO IMPLEMENT SB 1818, THE STATE DENSITY BONUS LAW (ZOA 04-09)

THE CITY COUNCIL City of Clayton, California

THE CITY COUNCIL OF THE CITY OF CLAYTON FINDS AS FOLLOWS:

WHEREAS, Senate Bill (SB) 1818 requires that cities and counties in the State of California adopt local ordinances to implement the provisions of that law; and

WHEREAS, the intent of SB 1818 is to increase the number of affordable housing units constructed in the State of California by implementing various measures including lowering the thresholds for eligibility for density bonuses, increasing the maximum percentage of possible bonus to 35% from 25%, increasing the number of incentives that local communities must offer to qualified development projects, and offering a land donation consideration for obtaining a density bonus based on satisfying specified criteria; and

WHEREAS, the Planning Commission held duly-noted public hearings on October 13, and October 27, 2009 to review the requirements of SB 1818 and consider amendments of the Municipal Code to formally implement SB 1818 in accordance with State law; and

WHEREAS, at its public hearing on October 27, 2009, the Planning Commission received and considered a staff report, background information, comments, and testimony regarding a proposed amendment to Title 17 of the Clayton Municipal Code to add Chapter 17.90 Density Bonus to that Title to implement SB 1818 in accordance with State law; and

WHEREAS, the Planning Commission determined that the proposed amendment to Title 17 of adding Chapter 17.90 would qualify for a categorical exemption from the California Environmental Quality Act (CEQA) in accordance with Section 15283 of the State CEQA Guidelines; determined that this amendment would be in conformance with the General Plan; determined that the public necessity, convenience, and general welfare would require adoption of this amendment; and recommended City Council approval of the amendment; and

WHEREAS, on November __, 2009 and December __, 2009, the City Council held duly-noticed public hearings and gave due consideration to all testimony, comments, and documents received; and

WHEREAS, the City Council determined that the amendments of the Municipal Code would qualify for categorical exemption from the California Environmental Quality Act (CEQA)

in accordance with Section 15283 of the State CEQA Guidelines; and

WHEREAS, the City Council determined that the following amendment would be in general conformance with the General Plan; and

WHEREAS, the City Council determined that the public necessity, convenience, and general welfare would require adoption of the amendment; and

WHEREAS, there is no evidence that the amendments will have the potential for any individual or cumulative adverse effects on fish and wildlife resources or their habitat, as defined in Section 711.2 of the Fish and Game Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 17 of the Municipal Code shall be amended to add Chapter 17.90, referred to herein as **Attachment 1**.

SECTION 2. If any provision of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 3. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinance and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on _____, 2009.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

Julie K. Pierce, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Dan Adams, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on _____, 2009, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on _____, 2009.

Laci J. Jackson, City Clerk

Attachment 1

ZOA\2009\04-09.ord1

Chapter 17.90

DENSITY BONUS

Sections:

17.90.010	TITLE
17.10.020	DEFINITIONS
17.10.030	APPLICATION
17.10.040	SPECIFIED HOUSING UNITS
17.10.050	LAND DONATION
17.10.060	CHILD CARE FACILITIES
17.10.070	CONDOMINIUM CONVERSIONS
17.10.080	DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE HOUSING UNITS
17.10.090	REQUESTS FOR INCENTIVES OR CONCESSIONS
17.10.100	GRANTING OF INCENTIVES OR CONCESSIONS
17.10.110	TYPES OF INCENTIVES OR CONCESSIONS
17.10.120	COMPLIANCE
17.10.130	DENSITY BONUS APPLICATION
17.10.140	AFFORDABLE HOUSING UNIT PLAN
17.10.150	AFFORDABLE HOUSING UNIT AGREEMENT
17.10.160	AFFORDABLE HOUSING UNIT AGREEMENTS FOR OWNERSHIP UNITS
17.10.170	AFFORDABLE HOUSING UNIT AGREEMENTS FOR RENTAL UNITS
17.10.180	ADMINISTRATIVE FEE
17.19.190	VIOLATION OF AFFORDABLE HOUSING COST REQUIREMENTS

17.90.010 TITLE. This Chapter shall be known and may be cited as the Density Bonus Ordinance of the City of Clayton.

17.90.020 DEFINITIONS. Certain words and phrases are defined within this Chapter. Where it appears from the context of such words, phrases, or provisions that a different meaning is intended, the definition shall be as determined by the Community Development Director.

- a. 'Affordable Housing Cost,' 'Affordable Ownership Housing Cost' and 'Affordable Rental Housing Cost' are defined as the allowable percentage of gross household income a household spends on housing costs for a given income group, as defined below:
 - (1) For Very Low Income households, the Affordable Housing Cost shall not exceed the product of thirty percent (30%) times fifty percent (50%) of the Area Median Income adjusted for family size appropriate for the unit;
 - (2) For Lower Income households, the Affordable Housing Cost shall not exceed the product thirty percent (30%) times seventy percent (70%) of the Area Median Income adjusted for family size appropriate for the unit;
 - (3) For Moderate Income households, the Affordable Housing Cost shall not be less than twenty-eight percent (28%) of the gross income of the household, nor exceed the product of thirty-five percent (35%) times one hundred ten percent (110%) of the Area Median Income adjusted for family size appropriate for the unit;
 - (4) For owner-occupied units, the Affordable Housing Cost includes the monthly mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees (where applicable); and,
 - (5) For renter-occupied units, the Affordable Housing Cost includes the monthly rent plus utility allowance, as defined by the Contra Costa County Housing Authority.
- b. 'Affordable Housing Unit' is defined as a Dwelling Unit within a Residential Development Project which will be made available to and reserved for Very Low Income households, Lower Income households or Moderate Income households at an Affordable Housing Cost for the respective group(s).
- c. 'Applicant' is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek residential property development permits or approvals from the City of Clayton.

- d. 'Area Median Income (AMI)' is defined as the median income for Contra Costa County as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.
- e. 'Child Care Facility' is defined as a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility.
- f. 'Child Care Facility Density Bonus' means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of the City of Clayton of the following amounts: A maximum of five (5) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for existing structures; or a maximum of ten (10) square feet of floor area for each one square foot of floor area contained in the Child Care Facility for new structures.
- g. 'Condominium Conversion Density Bonus' means an increase in units of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion.
- h. 'Density Bonus' is defined as a density increase of at least five percent (5%), unless a lesser percentage is elected by the Applicant, and no more than thirty - five percent (35%) over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the Applicant to the City of Clayton.
- l. 'Development Standard' is defined as site or construction conditions that apply to a Residential Development Project pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, resolution, or regulation.
- J. 'Dwelling Unit' is defined as a dwelling designed and intended for residential occupancy by one household.
- k. 'Floor Area' is defined as to a commercial or industrial project, as the floor area as calculated under the applicable zoning ordinance of the City of Clayton and as to a Child Care Facility, as the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.
- l. 'Household Income' is defined as the gross annual household income for all adult wage earners, Senior Citizen or disabled family members and any other sources of household income.
- m. 'Lower Income Households' is defined as households with a total combined income not exceeding eighty percent (80%) of the Area Median Income, adjusted for

household size, as established by the U.S. Department of Housing and Urban Development.

- n. 'Marketing Plan' is defined as a plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units.
- o. 'Maximum Allowable Residential Density' is defined as the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.
- p. 'Mixed-Use Development Project' is defined as a Residential Development Project that may include a mix of commercial, office, industrial or residential uses.
- q. 'Mobilehome Park' is defined as a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- r. 'Moderate Income Households' is defined as households with a total combined income not exceeding one hundred and twenty percent (120%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.
- s. 'Presumed Occupancy Levels' are defined as: One person for a studio unit; two people for a one bedroom unit; three people for a two bedroom unit; and one additional person for each additional bedroom thereafter.
- t. 'Resale Controls and/or Rent Restrictions' are defined as the restrictions, set forth by the City of Clayton or by state and/or federal law, by which the rents paid on rental Affordable Housing Units and the sales price for ownership Affordable Housing Units are limited to ensure that the unit remains affordable to Very Low or Low Income households for a term of no less than thirty (30) years. With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.
- u. 'Residential Development Project' is defined as detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, and mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four (24) month period and which are under the same ownership.
- v. 'Senior Citizen Household' is defined as a household headed by a person sixty-two (62) years of age or older.
- w. 'Senior Citizen Housing Development' is defined as a development of at least thirty - five (35) dwelling units reserved for Senior Citizen Households and as further described in Sections 51.3 and 51.12 of the Civil Code.

- x. 'Very Low Income Households' is defined as households with a total combined income not exceeding fifty percent (50%) of the Area Median Income, adjusted for household size, as established by the U.S. Department of Housing and Urban Development.

17.90.030 APPLICATION. The provisions of this Article apply to Residential Development Projects and mixed-use Residential Development Projects, consisting of either two (2) or more general Dwelling Units, Senior Citizen Housing Developments or Mobilehome Parks.

17.90.040 SPECIFIED HOUSING UNITS The City shall grant a Density Bonus, and incentives or concessions described in Section 17.90.110, when an Applicant for a Residential Development Project seeks and agrees to construct at least anyone of the following:

- a. Ten percent (10%) of the total Dwelling Units of a Residential Development Project for Lower Income Households; or
- b. Five percent (5%) of the total Dwelling Units of a Residential Development Project for Very Low Income Households; or
- c. A Residential Development Project meeting the requirements of a Senior Citizen Housing Development or a Mobilehome Park; or
- d. Ten percent (10%) of the total Dwelling Units in a common interest development as defined in Section 1351 of the Civil Code, for persons and families of Moderate Income, provided that all units in the development are offered to the public for purchase.

The Applicant shall elect whether the Density Bonus shall be awarded on the basis of Section 17.90.040 a., b., c. or d. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a Density Bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The Density Bonus shall not be included when determining the number of Dwelling Units that is equal to five (5%) or ten (10%) percent of the total Dwelling Units.

For Residential Development Projects that meet the criteria of Section 17.90.040 a., the Density Bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5

18	32
19	33.5
20	35

For Residential Development Projects that meet the criteria of Section 17.90.040 b., the Density Bonus shall be calculated as follows:

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

For Residential Development Projects that meet the criteria of Section 17.90.040 c., the Density Bonus shall be twenty (20%) percent.

For Residential Development Projects that meet the criteria of Section 17.90.040 d., the Density Bonus shall be calculated as follows:

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30

36	31
37	32
38	33
39	34
40	35

Residential Development Projects incorporating a Density Bonus require review and approval by the Planning Commission; provided, however, that if the Residential Development Project involves another permit or entitlement requiring City Council approval, then the Planning Commission may recommend approval or deny the project. Decisions of the Planning Commission may be appealed to the City Council as provided in Chapter 17.68 of the Municipal Code.

17.90.050 LAND DONATION. When an Applicant donates land to the City, the Applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire Residential Development Project as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

This Density Bonus shall be in addition to any Density Bonus mandated by Section 17.90.040, up to a maximum combined increase of thirty-five (35%) percent if the Applicant seeks both the increase required under this section and the increase under Section 17.90.040. All Density Bonuses resulting in fractional numbers shall be rounded up to the next whole number.

An Applicant shall be eligible for the increased Density Bonus described in this section if all of the following conditions are met:

- a. The Applicant donates and transfers the land to the City no later than the date of approval by the City of the final subdivision map, parcel map, or residential development application of the Residential Development Project seeking the Density Bonus.
- b. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to Very Low Income households in an amount not less than ten percent (10%) of the number of residential units of the proposed Residential Development Project seeking the Density Bonus.
- c. The transferred land is characterized by the following:
 - (1) It is at least one acre in size or of sufficient size to permit development of at least twenty (20) units; and
 - (2) It has the appropriate general plan designation and is appropriately zoned for affordable housing; and
 - (3) It is or will be served by adequate public facilities and infrastructure; and
 - (4) It shall have appropriate zoning and development standards to make the development of the Affordable Housing Units feasible; and
 - (5) No later than the date of approval of the final subdivision map, parcel map, or of the Residential Development Project seeking the Density Bonus, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the Very Low Income housing units on the transferred land, except that the City may subject the proposed Residential Development Project to subsequent design review, if the design is not reviewed by the City prior to the time of transfer.
- d. The transferred land and the Affordable Housing Units shall be subject to a deed restriction, which shall be recorded on the property at the time of dedication, ensuring continued affordability of the units for a term of at least thirty (30) years.
- e. The land is transferred to the City or to another housing developer approved by the City.
- f. The transferred land shall be within the boundary of the proposed Residential Development Project or, if the City agrees, within one-quarter mile of the boundary of the proposed Residential Development Project.

17.90.060 CHILD CARE FACILITIES. When an Applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 17.90.040 and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Residential Development Project, the City shall grant either of the following: (i) An additional Density Bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the Child Care Facility; or (ii) an additional concession or incentive designated by the City to contribute significantly to the economic feasibility of the construction of the Child Care Facility.

The City shall require, as a condition of approving the Residential Development Project that the following occur: (i) The Child Care Facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the Affordable Housing Units are required to remain affordable pursuant to this Chapter; and (ii) of the children who attend the Child Care Facility, the children of Very Low Income Households, Lower Income Households, Moderate Income Households shall equal a percentage that is equal to or greater than the percentage of Dwelling Units that are made affordable to Very Low Income Households, Lower Income Households, or families of Moderate Income Households pursuant to Section 17.90.040.

Notwithstanding any requirement of this Chapter, the City shall not be required to provide a Density Bonus or concession for a Child Care Facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

17.90.070 CONDOMINIUM CONVERSIONS. When an Applicant's Residential Development Project is the conversion of an existing apartment complex to a condominium complex and the Applicant agrees to make at least thirty-three percent (33%) of the total units of the proposed condominium Residential Development Project affordable to moderate income households for thirty years (30), or fifteen percent (15%) of the total units of the proposed condominium Residential Development Project to Lower Income households for thirty years (30), and agrees to pay for the administrative costs incurred by the City related to processing the application and monitoring the future status of the Affordable Housing Units, the City shall either (i) grant a Condominium Conversion Density Bonus or (ii) provide other incentives of equivalent financial value to be determined by the City.

An Applicant shall be ineligible for a Condominium Conversion Density Bonus or other incentives under this Section if the apartments proposed for conversion constitute a Residential Development Project for which a Density Bonus or other incentives were previously provided in accordance with this Chapter.

17.90.080 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE HOUSING UNITS. Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Residential Development Project and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. The Affordable Housing Units must also comply with the following criteria:

- a. Rental Residential Development Projects: When Affordable Housing Units are required in rental Residential Development Projects, the units should be integrated with the project as a whole. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Housing Units shall be reasonably dispersed throughout the project.
- b. Owner-occupied Residential Development Projects: When Affordable Housing Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Housing Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. All Affordable Housing Units shall reflect the range and numbers of bedrooms provided in the project as a

whole, except that if the market-rate units provide more than four bedrooms, the Affordable Housing Units need not provide more than four bedrooms.

No building permits will be issued for market-rate units until permits for all Affordable Housing Units have been obtained, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

Market-rate units will not be inspected for occupancy until all Affordable Housing Units have been constructed, unless Affordable Housing Units are to be constructed in phases pursuant to a plan approved by the City.

17.90.090 REQUESTS FOR INCENTIVES OR CONCESSIONS. Applicant must submit a Density Bonus Application, as described in Section 17.90.130 below, for the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- a. The concession or incentive is not required in order to provide for Affordable Housing Costs;
- b. The concession or incentive would have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the Federal Register of Historic Resources, the California Register of Historical Resources or any locally officially designated architecturally and historically significant buildings 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.

17.90.100 GRANTING OF INCENTIVES OR CONCESSIONS. If the conditions of 17.90.040 are met by Applicant, the following incentives or concessions may be granted:

- a. One incentive or concession for a Residential Development Project that makes: At least ten percent (10%) of the total units affordable to Lower Income households; or at least five percent (5%) of the total units affordable to Very Low income households; or at least ten percent (10%) of the total units affordable to persons and families of Moderate Income in a common interest development.
- b. Two incentives or concessions for a Residential Development Project that makes: At least twenty percent (20%) of the total units affordable to Lower Income households; or at least ten percent (10%) of the total units affordable to Very Low income households; or at least twenty percent (20%) of the total units affordable to persons and families of Moderate Income in a common interest development.
- c. Three incentives or concessions for a Residential Development Project that makes: At least thirty percent (30%) of the total units for Lower Income households; at least fifteen percent (15%) for Very Low Income households, or at least thirty percent (30%) for persons and families of Moderate Income in a common interest development.

17.90.110 TYPES OF INCENTIVES OR CONCESSIONS. For the purposes of this Chapter, concession or incentive may mean:

- a. A reduction in site Development Standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission, resulting in identifiable, financially sufficient, and actual cost reductions, or
- b. A reduction in setback and square footage requirements; or
- c. A reduction in the ratio of vehicular parking spaces and/or configurations as set forth in Government Code Section 65915(p); or
- d. Approval of mixed use zoning in conjunction with the Residential Development Project if commercial, office, industrial, or other land uses will reduce the development cost of the Residential Development Project and if the commercial, office, industrial, or other land uses are compatible with the Residential Development Project and the existing or planned development in the area where the proposed housing project will be located.

Nothing in this Section shall be construed to require the provision of direct financial incentives for the Residential Housing Development, including the provision of publicly owned land by the City or the waiver of fees or dedication requirements.

17.90.120 COMPLIANCE. The provisions of this Article shall apply to all agents, successors and assignees of an Applicant, developer, builder or property owner proposing a Residential Development Project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Residential Development Project unless exempt from or in compliance with the terms of this Chapter.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

17.90.130 DENSITY BONUS APPLICATION. In order to receive the concessions and/or incentives described in Section 17.90.110, the Applicant must submit to the City a Density Bonus Application (DBA) which will be treated as part of the development application. At any time during the review process, the Community Development Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application for determining the consistency of the proposed DBA with the requirements of this Article.

The DBA should include, but not be limited to, the following:

- a. A description of the Residential Development Project including the proposed total number of Affordable Housing Units, Senior Housing Units or Mobilehome Park Units;
- b. The zoning and general plan designations and assessors parcel number(s) of the project site;

- c. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- d. A description of the concessions or incentives requested.
- e. If an additional incentive(s) is requested, the application should describe why the additional incentive(s) is necessary to provide the Affordable Housing Units.

17.90.140 AFFORDABLE HOUSING UNIT PLAN. The Applicant must submit an Affordable Housing Unit Plan (AHUP) which will be treated as part of the development application. At any time during the review process, the Community Development Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed AHUP with the requirements of this Chapter.

The AHUP should include, but not be limited to, the following:

- a. The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Housing Units;
- b. A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size, in square footage, of the Affordable Housing Units;
- c. The income levels to which each Affordable Housing Unit will be made affordable;
- d. The documents that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
- e. For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Housing Units proportionate to each proposed phase of development as required by this Chapter;
- f. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units; and
- g. Any other information reasonably requested by the Community Development Director to assist with evaluation of the AHUP under the standards of this Chapter.

17.90.150 AFFORDABLE HOUSING UNIT AGREEMENT. The form of the Affordable Housing Unit Agreement (AUA) will vary, depending on the manner in which the provisions of this Article are satisfied for a particular development. The AUA shall be recorded as a restriction on the parcel or parcels on which the Affordable Housing units will be constructed. The approval and recordation of the AUA shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The AUA shall be binding on all future owners and successors in interest. An AUA must include, at minimum, the following:

- a. A description of the development, including the total number of units, the number of Affordable Housing Units, and the tenure of the Affordable Housing Units;

- b. The size, in square footage, and location of Affordable Housing Units;
- c. A description of the household income group to be accommodated by the Affordable Housing Units, and the formula for determining the affordable rent or affordable sales price and housing cost for each Affordable Housing Unit;
- d. The term of affordability for the Affordable Housing Units;
- e. A schedule for completion and occupancy of the Affordable Housing Units;
- f. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- g. The Marketing Plan for sale or rental of the Affordable Housing Units;
- h. Provisions for monitoring the ongoing affordability of the Affordable Housing Units, and the process for qualifying prospective resident households for income eligibility; and
- i. A description of the concession(s) or incentive(s) provided by the City.

17.90.160 AFFORDABLE HOUSING UNIT AGREEMENTS FOR OWNERSHIP UNITS. In the case Residential Development Projects consisting of ownership units, the AUA must provide the following additional conditions governing the sale and use of Affordable Housing Units during the applicable use restriction period:

- a. Affordable Housing Units shall be sold to Very Low Income households, Lower Income households or Moderate Income households in a common interest development, at an affordable sales price and housing cost as defined by this Chapter.
- b. Affordable Housing Units shall be owner-occupied by Very Low or Lower Income households or by Moderate Income households within common interest developments.
- c. The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this Article during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing unit and shall contain such provisions as the City may require to ensure continued compliance with this Article and with Government Code Section 65915. With respect to Moderate Income Affordable Housing Units, the instrument or agreement shall provide for equity-sharing as set forth in Government Code Section 65915.
- d. Any additional obligations relevant to the compliance with this Chapter.

17.90.170 AFFORDABLE HOUSING UNIT AGREEMENTS FOR RENTAL UNITS. In the case of Residential Development Projects consisting of rental units, the AUA must provide the following additional conditions governing the use of Affordable Housing units during the use restriction period:

- a. Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing units for qualified tenants;
- b. Provisions requiring property owners to verify household incomes and maintain books and records to demonstrate compliance with this Article.
- c. Provisions requiring the Property Owner to submit an annual report to the City, which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing unit.
- d. Provisions describing the amount of, and timing for payment of, Administrative Fees to be paid to the City for the on-going compliance monitoring of the provisions of this Chapter.
- e. Any additional obligations relevant to the compliance with this Chapter.

17.90.180 ADMINISTRATIVE FEE. An administrative fee shall be charged to the Applicant for City review of all materials submitted in accordance with this Chapter and for on-going enforcement of the provisions of this Chapter. The fee amount shall be established by City Council resolution and will be described in the City of Clayton Master Fee Schedule. Fees will be charged for staff time and materials associated with the following activities: Development review process; project marketing and lease-up; long-term compliance of the Affordable Housing Units.

17.90.190 VIOLATION OF AFFORDABLE HOUSING COST REQUIREMENTS. In the event it is determined that rents in excess of those allowed by operation of this Chapter have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent charges.

In the event it is determined that a sales price in excess of that allowed by operation of this Chapter has been charged to an income-eligible household purchasing an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.

**Excerpted Pages 71-80 from the City of Clayton
2009-2014 Housing Element Update, dated June,
2009**

HOUSING ELEMENT UPDATE



Project Name/Year	Very Low	Low	Moderate	Above Moderate	Total
Total (1992–1999)	65	21	290	1,290	1,666
Total (1999–2004)	65	12	14	111	202
2007	0	0	1	9	10
2008	0	0	0	11	11
2009	0	0	0	0	0
Total (2007–2009)	0	0	1	20	21

Source: Community Development Department, March 2009

For planning purposes, the ABAG figures need to be adjusted to reflect the units that have been issued building permits between January 1, 2007 (the starting point for ABAG's Regional Housing Needs Determination) and March 2009. Table 41 shows modified need projections based on this adjustment.

In an effort to relate this building permit activity to the ABAG Regional Housing Needs Allocation figures, the Community Development Department assigned each new unit to one of the four income categories specified in the ABAG needs determination. This analysis also includes the projected housing need of extremely low-income households as defined by AB 2634. The results of this analysis are shown in Table 41.

Accounting for development activity in the current planning period (since January 2007), the balance of the City's projected housing need is an additional 130 housing units through the remainder of the planning period (June 2014).

TABLE 41
BALANCE OF REGIONAL HOUSING NEED

Income Category	2007 to 2014 ABAG Need Determination	Units Constructed/ Approved and Adjustments 2007–2014*	Percentage of Need Met	Balance of Existing Need
Extremely Low	24	0	0%	24
Very Low	25	0	0%	25
Low	35	0	0%	35
Moderate	33	1	3.0%	32
Above Moderate	34	20	58.8%	14
Total	151	21	13.9%	130

Units include both units constructed and those receiving building permits since January 1, 2007.

Source: Community Development Department; Association of Bay Area Governments

10.0 AVAILABILITY OF LAND AND SERVICES

This section assesses the availability of land and services to meet the needs documented in the Housing Needs section. This section also reviews Clayton's inventory of available residentially zoned land, calculates the buildout potential of this land, and reviews the adequacy of services to support future housing development.

LAND AVAILABLE FOR RESIDENTIAL DEVELOPMENT

Vacant Residential Land

As indicated in **Table 42**, Clayton had vacant residential land that, at approved densities, would allow for the development of between 46 and 57 units based on minimum and maximum allowable densities. The table also shows an estimated realistic capacity based on recent developments as listed in **Table 46** below. The vacant parcels in **Table 42** have an estimated realistic capacity of 44 units. Sites V-2, V-3, V-4, and V-5 comprise the City's available higher-density parcels and are most appropriate to meet the City's very low- and low-income RHNA. Recent development in the City has included lower-density single-family and lower-density multi-family projects. Three of the more recent developments as shown in **Table 46** are Rachel Ranch, Pine Hollow Estates, and Mitchell Creek Place. These projects developed at 73 percent, 96 percent, and 73 percent of their respective maximum allowable densities. Realistic capacity of the vacant sites was determined by using the average (81 percent) of the built density percentages of these recent projects. The map in Appendix C shows the location of these sites.

Underdeveloped Residential Land

Table 43 lists the location, size, and development potential of underdeveloped residential sites within the city limits. Sites U-3 and U-9 are designated and zoned in such a way that they are appropriate for lower-income RHNA as well. The realistic capacity for the underutilized sites was determined with the same built density percentage used for the vacant sites only after the existing units on the sites were accounted for. Underdeveloped sites yield the potential for between 46 and 104 additional units based on minimum and maximum allowable densities (see Appendix C). Using the realistic capacity methodology, there would be capacity for approximately 81 (113 if U-5 and U-6 were rezoned) units. Sites U-3 and U-9 are zoned appropriately for higher-density (lower-income units). Along with sites V-2 through V-5, these two sites yield a total capacity for approximately 97 units, which surpasses the City's low- and very low-income RHNA of 84 units, leaving a surplus of 13 units. The remaining "V" and "U" sites yield capacity for approximately 40 units (without rezone of U-5 and U-6) or 72 units (with rezone of U-5 and U-6). This nearly accommodates the remaining moderate- and above moderate-income RHNA for the City. The remaining six units could be met by the potential second-story residential units as shown in **Table 44** below. This would leave a surplus of 15 potential units. Alternatively, the remaining "V" and "U" sites yield capacity for approximately 72 units. This would provide a surplus of approximately 26 units after meeting the remaining 46 moderate- and above moderate-income RHNA. Refer to **Table 45** for a summary of how these sites may accommodate the City's RHNA.

Potential Second-Story Housing Units

Table 44 lists commercially designated parcels within the Town Center that may have some potential for serving as residential sites. In accordance with the General Plan, these units would need to be second-story units. Of the three available sites, there is a potential for up to approximately 21 units (see Appendix C).

TABLE 42
VACANT RESIDENTIAL LAND

Site*	APN	Location	Size	General Plan Designation	Zoning	Minimum Units	Maximum Units	Realistic Unit Capacity	Comments/ Known Development Constraints
V-1	118-230-010	5801 Caulfield Dr	0.26 ac	SF (LD)	PD	1	1	1	None
V-2	119-021-063	High St	1.11 ac	MF (MD)	PD	10.1	16	12	Designated as an Affordable Housing Opportunity (AHO) site, allowing for higher-density development. Slope constraint toward the western part of the property line that may require clustering of units to achieve maximum density.
V-3	121-090-011	Mitchell Canyon Rd. [Central]	4.14 ac	SF (MD)	R-15	12	12	9	Slope constraints on the western part of the property.
V-4	121-090-016	Mitchell Canyon Rd. [South]	4.51 ac	SF (MD)	R-15	13	13	10	Slope constraints on the western part of the property.

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CITY OF CLAYTON

Site*	APN	Location	Size	General Plan Designation	Zoning	Minimum Units	Maximum Units	Realistic Unit Capacity	Comments/ Known Development Constraints
V-5	120-015-011	Clayton Rd.	1.01 ac	MF-MD	PD	10.1	15	12	Old Firehouse site. Designated as an Affordable Housing Opportunity (AHO) site, allowing for higher-density development. No constraints.
Totals						46.2	57	44	

* See Appendix C: Residential Development Sites for location of sites.

Source: Community Development Department



HOUSING ELEMENT UPDATE

TABLE 43
UNDERDEVELOPED RESIDENTIAL LAND

Site*	APN	Location	Size	General Plan Design- ation	Zoning	Existing Units	Minimum Additional Units	Maximum Additional Units	Realistic Unit Capacity	Comments/ Known Development Constraints
U-1	078-020-006	1060 Pine Ln	6.24 ac.	SF (LD)	PD	1	5	17		Part of the site is subject to flooding. This site's PD zoning requires 20 percent open space (presumably met in flood zone). PD zoning allows clustering of units to achieve maximum density.
U-2	078-020-007	1080 Pine Ln	2.30 ac.	SF (LD)	PD	1	1	5		Same as Site U-1 above
U-3	118-020-029	Oakhurst Dr	12.89 ac.	SF (MD)	PD	2	37	62		Part of the site is subject to flooding. This site's PD zoning requires 20 percent open space and allows clustering of units to achieve maximum density.
U-4	118-230-001	Caulfield Dr	2.18 ac.	SF (LD)	R-15	1	1	5		None
U-5	119-050-036	Pine Hollow Ct [Frank parcel]	4.50 ac	SF (RD)	R-40-H	1	0	3		GP amendment to SF (LD) and rezoning to PD would allow between 4 and 13 units.

HOUSING ELEMENT UPDATE

CITY OF CLAYTON

Site*	APN	Location	Size	General Plan Designation	Zoning	Existing Units	Minimum Additional Units	Maximum Additional Units	Realistic Unit Capacity	Comments/ Known Development Constraints
U-6	119-080-009	Easley Ranch	13.52 ac	SF (LD) & Open Space-Public	A	2	0	0		Rezoning to PD would allow up to 30 units on the site. Units would need to be clustered due to flooding constraints.
U-7	120-015-012	Four Oaks Lane [Copeland]	1.20 ac	SF (LD)	R-15	2	0	1		
U-8	120-043-004	Pine Hollow Rd [West]	2.41 ac.	SF (LD)	R-15	1	1	6		None
U-9	121-090-012	895 Mitchell Canyon Rd [Northeast]	2.36 ac.	SF (MD)	R-15	1	1	5		None
Totals						12	46	104		

* See Figure 2: Residential Development Sites for location of sites.

Source: Community Development Department



HOUSING ELEMENT UPDATE

TABLE 44
POTENTIAL SECOND-STORY HOUSING UNITS

Site	APN	Location	Size	General Plan Designation	Specific Plan Designation	Zoning	Potential Units	Comments/Known Development Constraints
C-1	118-560-010	Main St	1.66 ac	TC Commercial	TC Commercial	PD	16	Owned by the Clayton Community Church. Underdeveloped Commercial Site. No constraints.
C-2	119-013-002	6026 Main St	5,000 s.f.	TC Commercial	TC Commercial	LC	1	Owned by Ipsens. Vacant site. No constraints.
C-3	119-017-003	Center St	18,550 s.f.	TC Commercial	MF (MD) / Resource Protection	PD	4	Owned by Alderette. Vacant site. Some slope constraints.
Total							21	

* All residential units would be second-story units.
Source: Community Development Department

Summary of Potential Housing Units

Clayton has available vacant and appropriately zoned sites in a variety of forms to accommodate approximately 161 units of new housing with existing zoning. Table 45 summarizes how available vacant, underdeveloped, and mixed-use sites accommodate the City's 2007–2014 RHNA.

TABLE 45
SUMMARY OF POTENTIAL HOUSING UNITS

	AMBAG Allocation	Units Built Since 2007	Remaining AMBAG Allocation	Capacity on Vacant/ Underutilized Sites	Surplus/ Carryover
Extremely Low Income	24	0	24	84 ¹	13 ²
Very Low Income	25	0	25		
Low Income	35	0	35		
Moderate Income	33	1	32	62 ³	15 ⁴
Above Moderate Income	34	20	14		
Total	151	21	130	146	28

1. 97 potential units on sites V-2, V-3, V-4, V-5, U-3 and U-9 to meet low-, very low-, and extremely low-income RHNA total of 845 with a surplus of 12 units.
2. These thirteen units are carried over to moderate income and are reflected in the 62 units as noted.
3. 13 units from the higher-density site surplus, 28 units from the remaining "V" and "U" sites and 21 units in commercial mixed-use (second-story residential) parcels showing in Table 44
4. These 15 units are surplus from the potential commercial mixed-use, second-story residential sites.

Approved Housing Projects

In addition to the potential number of housing units that could be developed on the land available for residential development in Table 45, Table 46 identifies the location, project name, and number of housing units that have received entitlements by Clayton since 2000. Two single-family residential developments — Bridlewood and Rachel Ranch — have been approved and constructed, providing an additional 27 single-family units. The Bridlewood project provided two affordable units. In addition, the Diamond Terrace project was completed in 2003, contributing 86 units, including 85 affordable units, to the City's housing stock. In 2004, the 24-unit Diablo Pointe subdivision was approved. Following approval of the site plans for the residences, the project was scheduled for construction and occupancy in 2006. As of May 2009, the project had final map approval and improvements but no units had yet been constructed. The project will provide three affordable units. The very low-income unit has been secured and deed-restricted for a 45-year period. The remaining low-income and moderate-income units are required to be secured and deed-restricted prior to the issuance of the twentieth certificate of occupancy. These units will further contribute to satisfying Clayton's fair share responsibility for 1999 to 2007.

**TABLE 46
RECENT HOUSING PROJECTS**

Project Name	Year Built	General Plan Designation	Zoning	Allowed Destiny	Built Density	Acreage of Site	# of Units	# of Affordable Units (if any)
Mitchell Creek Place	2007-2008	Multifamily Low Density	PD	7.6-10 du/ac	7.3 du/ac	1.22 ac	9	0
Diablo Point	2006	Single Family	R-40-H; R-40; R-10	varied	1.0 du/ac	24.10 ac	24	3
Pine Hollow Estates	2005-2006	Single Family Low Density	R-12	1.1-3 du/ac	2.9 du/ac	2.75 ac	8	0
Rachel Ranch	2003-2004	Single Family Low Density	R-12	1.1-3 du/ac	2.2 du/ac	3.61 ac	8	0
Diamond Terrace (PAM)	2003	Multiple Family	PD	7.6-20 du/ac	13.3 du/ac	6.45 ac	86	85
Bridlewood/Vintage Clayton	2001-2002	Single Family Medium Density	R-10	3.1-5 du/ac	2.69 du/ac	7.04 ac	19	1 (low income)

AVAILABILITY OF SERVICES

Water

The Contra Costa Water District (CCWD) provides public water supply, treatment, storage, and distribution in the City. CCWD obtains its water from Rock Slough, near Oakley, in the Delta, under the terms of a contract with the federal government. CCWD's 2005 Urban Water Management Plan (UWMP) indicates that CCWD had 174,100 acre-feet of water supply in 2005. The demand for water by CCWD customers in the same year was 152,037 acre-feet of water, which yields an excess supply of 22,063 acre-feet.

Water distributed by CCWD in the Clayton area is treated at the District's Bollman plant on Highway 4. The plant's maximum capacity in 2001 was 75 million gallons per day (mgd), which is sufficient for current levels of demand within its service area. CCWD officials report that the Bollman treatment plant, in its present configuration, can be expanded to a maximum capacity of 95 mgd, which is sufficient to handle increased water demand in Clayton. If development occurs east of the city, it is likely to require additional water supply and distribution facilities, including reservoirs, pumping stations, and distribution lines.