Division IV. Regulations Applying in All or Several Districts
Chapter 17.70
SITE REGULATIONS

Sections:

17.70.010 Specific purposes and applicability.
This chapter contains land use and development regulations, other than parking, loading, and sign regulations, that are applicable to sites in all or several districts. These regulations shall be applied as specified in Division II, Base District Regulations; Division III, Overlay Zoning Districts; and as prescribed in this chapter. (Ord. 87-4 N.S., 1987).

17.70.020 Relocated buildings.
In addition to the requirements of BMC Title 15, Buildings and Construction, a use permit for relocation of a building shall be required. This permit, to be issued by the community development director, shall establish conditions necessary to ensure that the relocated building will be compatible with its surroundings in terms of architectural character, height and bulk, and quality of exterior appearance. (Ord. 87-4 N.S., 1987).

17.70.030 Exterior materials in R districts.
In all R districts, the exterior walls of all structures, other than accessory structures, shall have a nonmetallic finish. (Ord. 87-4 N.S., 1987).

17.70.040 Religious assembly yard requirements.
Yards, height and bulk, and buffering requirements for religious assemblies shall be as specified by a use permit; provided, that the minimum interior side yard shall be 15 feet and the minimum rear yard shall be 25 feet. Yards adjoining street property lines shall not be less than required for a permitted use. (Ord. 87-4 N.S., 1987).

17.70.050 Nonresidential accessory structures.
A. In R Districts.

1. Timing. Nonresidential accessory structures shall not be established or constructed prior to the start of construction of a principal structure on a site, except that construction trailers may be placed on a site at the time site clearance and grading begins. Construction trailers shall be removed within 30 days following the issuance of a certificate of occupancy for the structure.

2. Location. Except as provided in this subsection, nonresidential accessory structures shall not occupy a required yard or court, or project beyond the front building line of the principal structure on a site. In the RS zone, a detached garage may protrude past the front building line of the principal structure, but may not be located within a required front yard; provided, that the design of the detached garage is compatible with the existing residence

in terms of architectural design, materials, colors, and exterior finishes. No accessory uses may be permitted off-site.

3. Maximum Height. The maximum height of a nonresidential accessory structure shall be 12 feet, subject to the provisions of this subsection; provided, that pitched roofs shall not exceed a height of 15 feet. For any RS lot containing a single-family residence, a pitched roof may extend to 20 feet in height to match the roof pitch of the existing or proposed residence on the site. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building.

4. Relation to Property Lines. A nonresidential accessory structure in a required rear yard shall be located on a property line or shall be not less than three feet from a property line. A structure on a property line shall not exceed six feet in height at the property line and shall not intercept an inclined daylight plane sloping inward from a point six feet above the property line and rising 1.0 feet for each foot of distance from the property line. A four-foot setback from an alley shall be provided for a garage door. A minimum three-foot distance shall be maintained between an accessory building and the principal structure on the site. An accessory building shall either directly abut another accessory building or a fence; provided, that the height requirements of this subsection are met, or shall maintain at least a three-foot setback from any fence or other accessory building on the site.

5. RS Districts. In an RS district, the total gross floor area of accessory structures more than four feet in height shall be counted in computing lot coverage, and shall meet the lot coverage requirements of BMC 17.24.030, except that the total area of any one accessory building shall not exceed the total area of the primary residential structure on the same site.

6. Patio Covers. A patio cover open on at least two sides and complying with all other provisions of this subsection may be attached to a principal structure and shall not be subject to requirements for courts opposite required windows.

7. Swimming Pools. An unenclosed swimming pool and related equipment may occupy a required rear yard or side yard but shall not be within five feet of a property line.

8. Decks. No deck that is 30 inches or more in height shall be located in a required yard.

9. Decorative Archways. A decorative archway may occupy a required front yard, provided it meets the driveway visibility requirements of BMC

17.74.150. No more than one archway per frontage may be constructed. Any decorative archway per frontage may be constructed. Any decorative archway shall have a maximum height of eight feet, a maximum width of eight feet, and a maximum depth of four feet.

B. In C, I, OS and PS Districts. Accessory structures shall comply with all regulations applicable to the principal structure on a site. Off-site accessory uses shall be allowed only with a use permit issued by the community development director.

C. In PD District. The location of accessory structures shall comply with the adopted PD or specific plan for a PD district. (Ord. 92-9 N.S. §§ 10 – 13, 1992; Ord. 89-1 N.S. §§ 27, 28, 1989; Ord. 87-4 N.S., 1987).

17.70.060 Accessory dwelling units.

A. Purpose. This section is intended to implement Program 1.06 of the city's 1999 – 2006 housing element in accordance with Government Code Section 65852.2 by permitting the creation of accessory dwelling units through an administrative process, thereby increasing housing opportunities for the community through use of existing housing resources and infrastructure.

B. Zoning. One accessory dwelling unit per parcel is permitted by right in all residential districts (RS, RM, and RH), and on lots with a single-family dwelling, subject to the development standards in subsection (D) of this section.

C. Administrative Permit. Accessory dwelling units require approval by the community development department director, or designee. Applications shall be submitted to the community development department accompanied by the required fee. The administrative permit for a second dwelling unit shall be processed as follows:

1. After receipt of a completed application, the community development director, or designee, will review the application and shall approve an accessory dwelling unit upon making all of the following findings:

a. The dwelling conforms to the design and development standards for accessory dwelling units established in subsection (D) of this section.

b. Either the primary or the accessory dwelling unit is owner-occupied with proof that this requirement has been recorded as a deed restriction. The community development director, or designee, may waive the owner-occupancy requirement if all of the following conditions are met:

i. The occupant(s) of one of the units is/are disabled;

ii. As a result of the disability, the occupant(s) is/are unable to hold title to the property as an owner; and

iii. The primary caretaker(s) of the disabled occupant(s) resides in the other unit.

The waiver of the owner-occupancy requirement is valid only so long as the above conditions are met.

c. Public utility and services including emergency access are adequate to serve both dwellings.

d. If the proposed accessory dwelling unit is located in the city's H historic overlay district on a property that is designated by the city's downtown or arsenal historic conservation plans as a historic, potentially historic, contributing or potentially contributing landmark or building, and the application involves an exterior modification to an existing structure or is a detached structure, the application will require discretionary review by the design review commission to ensure protection of a locally designated historic resource.

2. Approval or denial by the community development director, or designee, of an administrative permit for an accessory dwelling unit shall be noticed to the applicant in a "letter of action." This letter shall include findings of approval or denial. If necessary, conditions of approval made by the community development director, or designee, on granting the administrative permit will be included in the letter.

3. The ministerial approval of an accessory dwelling unit shall expire two years from the date of approval unless made valid by construction of the unit. The community development director, or designee, may grant a maximum one-year extension of the two-year approval expiration period.

D. Design and Development Standards.

1. Lot Size. Accessory dwelling units shall only be permitted on residential lots of 6,000 square feet or greater.

2. Lot Coverage. The basic requirements of Chapter 17.24 BMC shall apply.

3. Unit Size. An accessory dwelling unit, whether within, attached to, or detached from the existing structure, shall not exceed 800 square feet, or the size of the primary dwelling unit, whichever is less. The existing unit may be considered the accessory unit, and a new dwelling unit built, if all applicable standards and requirements of this title are met.

4. Building Location.

a. Accessory dwelling units shall not be permitted in a required yard or court except if a rear yard is adjacent to an alley and a four-foot setback for a vehicle entrance to a covered parking structure is maintained.

b. A six-foot distance from any existing dwelling shall be maintained.

5. Building Height. The maximum height of a detached accessory dwelling unit shall be 12 feet, except that pitched roofs may have a height of 15 feet. The maximum height of any wall shall not exceed 12 feet at the eaves. No second story, other than an unfinished storage area, may be developed for any accessory building.

6. Parking. A minimum of three off-street parking spaces shall be required for a lot containing an accessory dwelling. One parking space, which is not required to be covered, shall serve the accessory unit. The additional parking space for the accessory dwelling unit shall not be placed within the required front yard setback unless, at the discretion of the community development director, or designee, there is no other reasonable place for the additional parking space to be located and appropriate landscaping and/or berming is provided to mitigate any adverse aesthetic impacts.

7. Design.

a. Accessory dwelling units shall be designed to be compatible and in harmony with existing development in the immediate neighborhood. Building materials, architectural features, colors, and exterior finishes should be substantially similar as those on the existing dwelling unit.

b. The orientation of accessory dwelling units on the lot shall be designed so that the privacy of adjacent neighbors is reasonably preserved. This includes measures such as limiting windows that have openings facing adjacent properties, height considerations, and/or window glass treatments.

c. An accessory dwelling unit shall have a backlit illuminated address sign.

E. Appeals. The decision of the community development director, or designee, shall be final on the tenth business day following the decision, unless appealed or reviewed in accordance with Chapter 1.44 BMC.

F. Recordation.

1. The administrative conditions of approval shall be filed for record with the county recorder and evidence of such filing shall be submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling.

2. A deed restriction stipulating that the property owner occupies either the main or accessory dwelling unit, unless a waiver to this requirement has been granted under subsection (C) of this section, shall be filed with the county recorder and evidence of recordation submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling.

3. A deed restriction stipulating that only one accessory dwelling unit is allowed and that it shall not be sold separately from the primary dwelling shall be filed with the county recorder and evidence of recordation submitted to the community development director, or designee, prior to issuance of building permit(s) or rental and occupancy of the accessory dwelling. (Ord. 07-60 § 1; Ord. 04-2 § 2; Ord. 99-7; Ord. 92-15 N.S. § 12, 1992; Ord. 92-9 N.S. § 14, 1992; Ord. 87-4 N.S., 1987).

17.70.070 Home occupations in R districts.

A. Permit Required. A home occupation in an R district shall require a home occupation permit obtained by filing a completed application form with the community development director. The community development director shall issue the permit upon determining that the proposed home occupation complies with the requirements of this section.

B. Contents of Application. An application for a home occupation permit shall contain:

1. The name, address, and telephone number of the applicant;

2. A complete description of the proposed home occupation, including number and occupation of persons employed, amount of floor space occupied, provisions for storage of materials, and number and type of vehicles used.

C. Required Conditions. Home occupations shall comply with the following regulations:

1. There shall be no stock-in-trade other than products fabricated on the premises.

2. A home occupation shall be conducted entirely within a building and shall occupy no more than 500 square feet of floor area. No outdoor storage shall be permitted.

3. The existence of a home occupation shall not be apparent beyond the boundaries of the site.

4. No one other than a resident of the dwelling shall be employed on-site or report to work at the site in the conduct of a home occupation.

5. No kilns shall be permitted, and a home occupation shall comply with the performance standards prescribed by BMC 17.70.240; provided, that no noise shall be perceptible at or beyond the property line.

6. Not more than one truck, with a maximum capacity of one ton, incidental to a home occupation shall be kept on the site. The number of parking spaces available to a dwelling unit housing a home occupation shall not be reduced to less than two.

7. A home occupation shall not create pedestrian, automobile, or truck traffic significantly in excess of the normal amount in the district.

8. No motor vehicle repair, beauty shop nor barber shop shall be permitted, and a home occupation shall not include an office nor sales room open to visitors without prior appointments, and there shall be no advertising of the address of the home occupation that results in attracting persons to the premises.

D. The permit for a home occupation that is not operated in compliance with these regulations shall be revoked by the community development director after 30 days' written notice unless the home occupation is altered to comply. (Ord. 87 -4 N.S., 1987).

17.70.080 Swimming pools and hot tubs.

Swimming pools and hot tubs shall be fenced, as required by BMC 15.04.088. Additional fencing, separation, or fixed windows shall be required where, in the judgment of the building official, such features are needed for safety. (Ord. 87-4 N.S., 1987).

17.70.090 Eating and drinking establishments with take-out service.

The following supplementary development regulations shall apply to eating and drinking establishments with take-out service other than limited take-out service, as defined:

A. No Walk-Up Service in CC and CG Districts. Food shall be delivered to patrons within a car or within a building, or enclosed or covered outdoor eating area.

B. Minimum Separation. Establishments shall not be closer than 500 feet to a public or private school, park, or playground in an R, OS, or PS district.

C. Litter Control. Identifiable containers and napkins shall be used for all carry-out food, and all litter resulting, including litter on adjacent property and public rights-of-way, shall be promptly removed. A use permit may require the operator to retain a contract litter cleanup service if the community development director determines that a litter problem exists. (Ord. 87-4 N.S., 1987).

17.70.100 Live entertainment.

The following regulations shall apply to any use offering scheduled live entertainment, as defined, more than three times per calendar year:

A. Exits not limited to emergency use only shall not be opposite an R district adjoining the site.

B. A use permit shall establish conditions ensuring that no litter problem will exist.

C. A use permit for live entertainment shall apply only to the type of entertainment approved, and a different type of entertainment shall require approval of a new use permit. (Ord. 87-4 N.S., 1987).

17.70.110 Service stations, vehicle/equipment repair, and automobile washing.

The following supplementary development regulations shall apply to the service station, vehicle/equipment repair, and automobile washing use classifications.

A. Minimum Separation. Minimum separation between site boundaries shall be 500 feet, except that one such use may be located at each corner of a street intersection.

B. Site Layout. Conditions of approval of a zoning or use permit may require buffering, screening, planting areas, or hours of operation necessary to avoid adverse impacts on properties in the surrounding area.

C. Planting Areas. Perimeter planting areas shall be as required for parking lots by Chapter 17.74 BMC, except where a building adjoins an interior property line. Required interior planting areas may adjoin perimeter planting areas.

D. Storage of Materials and Equipment. The provisions of BMC 17.70.200, Outdoor facilities, shall apply, except that a display rack for automobile products

no more than four feet wide may be maintained on each pump island of a service station. If display racks are not located on pump islands, they shall be placed within three feet of the principal building, and shall be limited to one per street frontage. Storage of inoperative vehicles is prohibited. (Ord. 87-4 N.S., 1987).

17.70.120 Maximum dwelling unit occupancy.

To ensure consistency with the density policies of the general plan and with the rights of individuals living as a household but not related by blood or marriage, occupancy by persons living as a single household in a dwelling unit shall be limited as follows:

A. A dwelling unit shall have 150 square feet of gross floor area for each of the first 10 occupants and 300 square feet for each additional occupant to a maximum of 20. In no case shall a dwelling unit be occupied by more than 20 persons.

B. A zoning permit shall be required for occupancy of a dwelling unit by more than 10 persons 18 years or older. The community development director shall not issue a zoning permit unless evidence is presented that all vehicles used by occupants will be stored on the site in conformance with the provisions of this title. (Ord. 87-4 N.S., 1987).

17.70.130 Development on substandard lots.

A. A legally created lot having a width or area less than required for the district in which it is located may be occupied by a permitted or conditional use if it has a width of 25 feet or more and an area of 2,500 square feet or more; provided, that on the effective date of regulations that made it substandard it was in single ownership separate from any abutting lot. No substandard lot shall be further reduced in area or width.

B. Except as provided below, a substandard lot shall be subject to the same yard and density requirements as a standard lot; provided, that in an R district one dwelling unit may be located on a substandard lot that meets the requirements of this section. In an R district, the required interior side yard for a single-family residence, on a building site which is substandard in width, may be reduced to as much as 10 percent of the lot width, and a street side yard may be reduced to as much as 20 percent of the lot width, except that no site may have a yard width of less than three feet. (Ord. 89-1 N.S. § 29, 1989; Ord. 87-4 N.S., 1987).

17.70.140 Development on lots divided by district boundaries.

The regulations applicable to each district shall be applied to the area within that district, and no use other than parking serving a principal use on the site shall be located in a district in which it is not a permitted or conditional use. Pedestrian or vehicular access from a street to a use shall not traverse a portion of the site in a

district in which the use is not a permitted or conditional use. (Ord. 87-4 N.S., 1987).

17.70.150 Building projections into yards and courts.
Projections into required yards shall be permitted as follows:

A. Fireplaces or chimneys: 18 inches.

B. Uncovered porches, terraces, platforms, decks, subterranean garages, and patios not more than 30 inches in height: four feet in a corner side yard and six feet in a front yard. There is no minimum setback requirement for these structures in the rear or interior side yards.

C. Cornices, eaves, and ornamental features: two feet.

D. Stairs, canopies, awnings, sunrooms, and covered porches: six feet into a front or rear yard, three feet into a corner side yard, and two feet into an interior side yard.

E. Balconies and bay windows: two and one-half feet into a front or rear yard, two feet into a corner side yard, and 18 inches into an interior side yard.

F. In the RS district, where the rear property line of a site adjoins an area of permanent open space, the following projections will be permitted:

1. Attached decks above the first floor level: six feet into a rear yard.

2. Detached decks more than 30 inches and not more than 48 inches in height: 12 feet into a rear yard, except that such a deck shall maintain a minimum side yard setback of five feet. (Ord. 92-15 N.S. § 13, 1992; Ord. 92-9 N.S. § 15, 1992; Ord. 87-4 N.S., 1987).

17.70.160 Front yards in R districts.
Where lots comprising 40 percent of the frontage on a blockface in an R district are improved with buildings, the required front yard shall be the average of the front yard depths for structures other than detached garages or carports on each developed site in the same district on the blockface. In computing the average, the actual depth shall be used up to a maximum depth 10 feet greater than the normally required front yard for any site having a yard depth exceeding the minimum requirement. (Ord. 89-1 N.S. § 30, 1989; Ord. 87-4 N.S., 1987).

17.70.170 Measurement of height.
Height shall be measured from finished grade at all points on the site to a warped plane an equal height above all points on the site. (Ord. 87-4 N.S., 1987).

17.70.180 Exceptions to height limits.

Towers, spires, cupolas, chimneys, elevator penthouses, water tanks, flagpoles, monuments, theater scenery lofts, radio and television antennas, transmission towers, fire towers, and similar structures and necessary mechanical appurtenances, covering not more than 10 percent of the ground area covered by the structure to which they are accessory, may exceed the maximum permitted height in the district in which the site is located if the site is outside the shoreline area defined in BMC 17.24.030(K), subject to the following regulations:

A. In an RS district, a chimney may exceed the permitted height by two feet, but a use permit shall be required for any other structure exceeding the permitted height in the district and shall not be issued for height in excess of 20 feet above the district height limit.

B. In an RM or RH district, a structure may exceed the district height limit by not more than eight feet if no portion intercepts an inclined daylight plane sloping inward from the nearest lot line at a 45-degree angle from the height of the highest building wall permitted adjoining a required yard; provided, that a chimney may intercept the daylight plane. A use permit shall be required for any structure exceeding the height limit by more than eight feet and shall not be issued for height in excess of 20 feet above the district height limit.

C. In a CI, PS, or OS district, a structure may exceed the district height limit by 10 feet, and a use permit may be approved for features extending more than 10 feet above the district height limit.

D. For projects to be acted on by the planning commission, requests for approval of height use permits shall be acted on by the planning commission. For projects which require action by the design review commission only, requests for approval of height use permits shall be acted on by the design review commission. For projects to be acted on by the community development director only, the design review commission shall act on the height use permit application. Applications for higher light poles in the I districts shall be acted on by the community development director. (Ord. 99-1 N.S.; Ord. 87-4 N.S., 1987).

17.70.190 Landscaping, irrigation, and hydroseeding.

A. General Requirement. Minimum site landscaping and required planting areas shall be installed in accord with the standards and requirements of this section, which shall apply to all projects for which a zoning permit is required except single-family residences.

1. Landscape plans shall be prepared by a landscape designer, a licensed landscape architect or other qualified person, and no significant or substantive changes to approved landscaping or irrigation plans shall be

made without prior written approval by the community development director and the landscape designer.

2. Evidence of completion of required landscaping and irrigation improvements shall be supplied to the planning department on a landscape certification form. This form shall be required to be submitted prior to issuance of an occupancy permit for new construction unless an extension of up to one year is granted by the community development director.

3. For projects consisting primarily of additions to or remodeling of existing buildings for which landscaping is required, a deferred completion agreement shall be executed prior to issuance of the building permit. The agreement shall guarantee installation of the landscaping and any irrigation improvements within one year or prior to occupancy, whichever occurs first.

B. Standards.

1. Required planting areas shall be permanently maintained. As used in this section, “maintained” includes watering, weeding, pruning, insect control, and replacement of plant materials and irrigation equipment as needed to preserve the health and appearance of plant materials. Any landscaping plant material shown on an approved landscape plan removed for any reason shall be replaced by the property owner within a time frame established by the community development director.

2. Landscape materials shall not be located such that, at maturity:

a. They interfere with safe sight distances for vehicular, bicycle or pedestrian traffic;

b. They conflict with overhead utility lines, overhead lights, or walkway lights; or

c. They block pedestrian or bicycle ways.

C. Landscaping Plans Required. Each application for a zoning permit shall include plans and written material describing all existing trees, including species, height, diameter, and condition, and showing how any applicable site landscaping or planting area requirements are to be met. The degree of specificity of such plans and written material shall relate to the type of permit or request for approval being sought.

D. Materials. Landscape plans shall demonstrate a recognizable pattern or theme for the overall development by choice and location of materials. To accomplish this, landscape plans shall conform to the following:

1. Plant materials shall be selected for: energy efficiency and drought tolerance; adaptability and relationship to Benicia environment; color, form and pattern; ability to provide shade; soil retention, fire resistiveness, etc. The overall landscape plan shall be integrated with all elements of the project, such as buildings, parking lots and streets, to achieve desirable microclimate and minimize energy demand.

2. Plant materials shall be sized and spaced to achieve an immediate effect and shall normally not be less than a 15-gallon container for trees, five-gallon container for specimen shrubs, and a one-gallon container for mass planting.

3. The use of crushed rock or gravel for large area coverage shall be avoided (except for walks and equestrian paths).

4. Nonturf areas, such as shrub beds, shall be top dressed with a bark chip mulch or approved alternative.

5. Where shrubs or low-level vegetation are used, vegetative matter at maturity shall cover at least 75 percent of actual planted area.

6. Street trees shall be included, conforming to the street tree regulations prescribed in BMC Title 12.

E. Design Standards. Parking lots shall have perimeter planting areas as prescribed by the following schedule and, in addition, shall have five percent of the area, excluding the perimeter planting strips, devoted to planting distributed throughout the parking lot.

Width of Perimeter Planting Strip (feet)			
Parking Lot Dimension Adjoining Property Line	**Adjoining Street Property Line**	**Adjoining R District and Residential PD**	**Adjoining Nonresidential Distric Except IG and IW**
Up to 100 feet	5	5	3
More than 100 feet	10	5	5

A parking structure in a C or I district having at-grade parking adjoining a street shall have a 10-foot planting area adjoining the street property line.

1. Where landscaped areas are provided, they shall be a minimum of three feet in width, except window/wall planter boxes. Landscaped areas containing trees shall be a minimum of four feet in their narrowest dimension.

2. The end of each row of parking stalls shall be separated from driveways by a landscaped planter, sidewalk, or other means. Concrete curbs shall separate landscaped areas from parking areas.

3. A minimum of one tree per six spaces shall be distributed throughout the parking lot.

4. Where autos will extend over landscaping, the required planting area shall be increased two feet in depth by decreasing the length of the parking stall by two feet. Where autos will overhang into both sides of an interior landscaped strip or well, the minimum inside curb-to-curb interior planter dimension shall be seven feet.

F. Irrigation Plans. Irrigation plans shall be submitted with applications for building permits and for approval of improvement plans required for BMC Title 16, Subdivisions, and shall contain all construction details for an automatic system including, but not limited to, the following:

1. Location, type and size of lines;

2. Locations, type and gallonage output of heads and/or emitters;

3. Location and sizes of valves;

4. Location and type of controller;

5. Installation details;

6. Location and type of backflow prevention device (as per health code);

7. Available water pressure and water meter outlet size;

8. Irrigation application schedule and flow rates.

G. Hydroseeding. Plans indicating location and type of hydroseeding shall be submitted with applications for building permits and for approval of improvement plans required by BMC Title 16, Subdivisions, when such planting is to be utilized for permanent landscape treatment or for natural area restoration. Hydroseeding plans shall contain installation specifications including, but not limited to:

1. Seed mix and application rate. A native seed mix containing a minimum of 10 percent shrub and perennial seeds shall be utilized in areas where permanent landscape restoration is required. Species selected shall include plant materials native to the area.

2. Fertilizer, mulch materials, soil preparation and watering specifications.

H. *Repealed by Ord. 08-03.*

I. All required landscape, parking lot, and street trees shall be replaced in accordance with the city's tree preservation guidelines. (Ord. 08-03 § 3; Ord. 99-1 N.S.).

17.70.200 Outdoor facilities.

A. Where Permitted. Outdoor storage and display of merchandise, materials, or equipment shall be permitted in the CC, CW, CG, IL, IG, PS and OS districts subject to approval of a use permit by the community development director. Outdoor food service accessory to an eating and drinking establishment may be permitted subject to approval of a use permit by the community development director in any I, C, OS, or PS district, but no outdoor preparation of food or beverages shall be permitted. A use permit for outdoor storage, display, or food service may require yards, screening, or planting areas necessary to prevent adverse impacts on surrounding properties and the visual character of scenic corridors as identified in the general plan. If such impacts cannot be prevented, the use permit application shall be denied.

B. Exceptions. Notwithstanding the provisions of subsection (A) of this section, outdoor storage and display shall be permitted in conjunction with the following use classifications in districts where they are permitted or conditionally permitted:

1. Nurseries, provided outdoor storage and display is limited to plants only;

2. Vehicle/equipment sales and rentals, provided outdoor storage and display shall be limited to vehicles or equipment offered for sale only.

C. Screening. In districts where outdoor storage and display is permitted, and except for the use classifications excepted by subsection (B) of this section, outdoor storage areas shall be screened from view of streets by a solid fence or wall. The height of merchandise, materials, and equipment stored shall not exceed the height of the screening fence or wall. The community development director may require additional screening in highly visible areas and may impose reasonable restrictions on the type of storage or display or the location of outdoor storage and display areas to avoid adverse visual effects. (Ord. 07-21 § 9; Ord. 87-4 N.S., 1987).

17.70.210 Screening of mechanical equipment.

A. General Requirement. Except as provided in subsection (B) of this section, all exterior mechanical equipment, except solar collectors, and operating mechanical equipment in IG and IW districts located more than 50 feet from an R, C, PS, PD or OS district boundary, shall be screened from view on all sides. Equipment to be screened includes, but is not limited to, heating, air conditioning, refrigeration equipment, plumbing lines, ductwork, and

transformers. Satellite receiving antennas shall be screened as prescribed by BMC 17.70.250. Screening of the top of equipment may be required by the community development director, if necessary to protect a significant view.

B. Utility Meters. Utility meters shall be screened from view from public rights-of-way, but need not be screened on top or when located on the interior side of a single-family dwelling. Meters in a required front yard or in a side yard adjoining a street shall be enclosed in subsurface vaults.

C. Screening Specifications. Screening materials may have evenly distributed openings or perforations not exceeding 50 percent of the surface area and shall effectively screen mechanical equipment so that it is not visible from a street or adjoining lot. (Ord. 87-4 N.S., 1987).

17.70.220 Refuse storage areas.

A refuse storage area screened on all sides by a six-foot solid wood or masonry wall, or located within a building, shall be provided prior to occupancy for all uses other than one-family or two-family dwellings. Locations and horizontal dimensions of refuse storage areas shall be as prescribed by the community development director. The community development director may waive this screening requirement in IG and IW districts for refuse collection and storage equipment, including dumpsters and waste containers that are not visible from public streets. (Ord. 87-4 N.S., 1987).

17.70.230 Underground utilities.

All electrical, telephone, CATV, and similar distribution lines providing direct service to a development site shall be installed underground within the site. Off-site utilities along a project frontage for all new commercial, multifamily, or industrial development shall be undergrounded, unless a deferral is granted by the planning commission for those projects over which it has approval authority, or by the design review commission for those projects over which it has approval authority, or by the community development director for those projects over which the director has approval authority, in accordance with the deferral requirements of BMC 16.36.020(G)(2). (Ord. 99-1 N.S.; Ord. 92-9 N.S. § 16, 1992; Ord. 89-1 § 31, 1989; Ord. 87-4 N.S., 1987).

17.70.240 Performance standards.

The following performance standards shall apply to all use classifications in all zoning districts:

A. Air Contaminants. All uses shall comply with rules, regulations, and standards of the Bay Area Air Quality Management District (BAAQMD). An applicant for a zoning permit or a use, activity, or process requiring BAAQMD approval of a permit to construct shall file a copy of the BAAQMD permit with the community development director. Any use, activity or process that requires BAAQMD

approval of a permit to operate shall file a copy of such permit with the community development director within 30 days of its approval.

B. Water Pollution. No person or use shall discharge liquids of any kind into a public or private sewage system, watercourse, body of water, or the ground, except in compliance with applicable regulations of the California Regional Water Quality Control Board (California Administrative Code, Title 23, Chapter 3 and California Water Code, Division 7).

C. Noise. All uses and activities shall comply with the provisions of the Benicia noise regulations (Chapter 8.20 BMC).

D. Glare.

1. From Glass. Mirrored or highly reflective glass shall not cover more than 20 percent of a building surface visible from a street unless an applicant submits surface information demonstrating to the satisfaction of the community development director that use of such glass would not significantly increase glare visible from adjacent streets and property or pose a hazard for moving vehicles.

2. From Outdoor Lighting. Parking lot lighting shall comply with BMC 17.74.170. Site lighting shall be designed and installed to confine direct light rays to the site. Minimum illumination at ground level shall be 0.5 footcandles, and shall not exceed 0.5 footcandles in an R district. Security lighting in any district may be indirect or diffused, or shall be shielded or directed away from adjoining properties and public rights-of-way. Lighting for outdoor court or field games within 300 feet of an R district shall require approval of a use permit.

E. Combustibles and Explosives. The use, handling, storage, and transportation of combustibles and explosives shall comply with the provisions of the Benicia fire prevention code (Chapter 8.28 BMC).

F. Radioactive Materials. The use, handling, storage, and transportation of radioactive materials shall comply with the provisions of the California Radiation Control Regulations (California Administrative Code, Title 17) and the Benicia fire prevention code (Chapter 8.28 BMC).

G. Hazardous and Extremely Hazardous Materials. The use, handling, storage, and transportation of hazardous and extremely hazardous materials shall comply with the provisions of the California Hazardous Materials Regulations (California Administrative Code, Title 22, Division 4) and BMC 17.70.260, Hazardous materials.

H. Heat and Humidity. Uses, activities, and processes shall not produce any unreasonable, disturbing, or unnecessary emissions of heat or humidity, at the property line of the site on which they are situated, that cause material distress, discomfort, or injury to the average person.

I. Electromagnetic Interference. Uses, activities and processes shall not cause electromagnetic interference with normal radio or television reception in R districts, or with the function of other electronic equipment beyond the property line of the site on which they are situated.

J. Evidence of Compliance. The community development director shall require such evidence of ability to comply with performance standards as he deems necessary prior to issuance of a zoning permit. (Ord. 92-9 N.S. § 17, 1992; Ord. 87-4 N.S., 1987).

17.70.250 Wireless communications facilities.

A. Purpose. This section is intended to establish development standards, in accordance with federal law and state rules and regulations, for antenna and wireless communication transmission (hereinafter called “wireless communication facilities”) that:

1. Minimize the potential health, public safety and aesthetic impacts of such facilities on the community;

2. Regulate the placement and design of wireless communication facilities so as to preserve the unique visual character of the community;

3. Encourage the location of wireless communication facilities in industrial and commercial districts and generally discourage the location of such facilities in residential districts;

4. Provide for the managed development of wireless communication facilities in a manner that reasonably accommodates the needs of citizens and wireless communication service providers;

5. Locate such wireless communication facilities where they are least visible from public rights-of-way in the vicinity, while not burdening adjacent property owners with adverse visual impacts; and

6. Protect landmark structures, historically significant structures, architecturally significant structures, landmark vistas or scenery, and view corridors from visually obtrusive wireless communication antennas and associated equipment.

B. Exemptions. Each exempt facility shall fully comply with other applicable requirements of the municipal code to the extent not specifically exempted in this

subsection, including but not limited to adopted building, electrical, plumbing, mechanical, and fire codes. The following wireless communication facilities are exempt from the standards of this section, except as noted in subsection (B)(2) of this section:

1. Direct broadcast satellite antennas and multipoint distribution services antennas measuring one meter or less in diameter (or diagonal measurement); and

2. Television broadcast system antennas designed to receive only television broadcast signals;

3. Satellite earth station antennas designed to receive and/or transmit radio frequency signals directly to and/or from a satellite measuring two meters or less in diameter (or diagonal measurement);

4. Amateur radio antennas. Antennas and antenna structures constructed by or for FCC-licensed amateur radio operators that comply with the following provisions:

a. The antenna structure, when fully extended, measures 35 feet or less in height, and measures 24 inches or less in diameter or width;

b. The antenna boom measures 20 feet or less in length and is three inches or less in diameter;

c. No antenna element exceeds 32 feet in length or two inches in diameter or width, with the exception of mid-element tuning devices which shall not exceed six inches in diameter or width; and

d. The turning radius of any antenna does not exceed 26 feet;

5. Public communication facilities, including personal wireless services, used and maintained by the city, or any fire district, school district, hospital, ambulance service, governmental agency, or similar public or semipublic use;

6. Private, noncommercial wireless communications facilities or systems contained entirely on-site for the purpose of serving the premises upon which the facility is located and having no potential visual, noise, thermal or radio frequency interference impacts to surrounding properties or the community;

7. Replacement of duly permitted facilities or equipment of a minor nature that does not increase the number or height of antennas or significantly

expand the size or capacity of the equipment cabinet or ancillary related equipment;

8. Any facility specifically exempted from City regulation by the rules and regulations of the Federal Communications Commission (FCC) or the provisions of a permit issued by the California Public Utilities Commission.

C. Criteria for Exempt Facilities. The following location and design standards shall apply to all wireless communication facilities that are exempt per subsection (B) of this section:

1. An antenna may be installed on a lot in any zoning district that is not subject to an H historic overlay district.

2. No facility shall be located in a front or street-side yard.

3. No wireless communication facility may be located within 10 feet of interior side and rear property lines; except if the antenna does not exceed six feet in height.

4. No antenna may exceed 15 feet, as measured from ground level immediately under the antenna to the highest point of the antenna or any appurtenance attached to it; however, the community development director may approve mounting an antenna on the rear half of a roof if no other feasible location exists, and all other applicable criteria of this subsection (C) are met. The justification for rooftop mounting shall be submitted with an application for a zoning permit.

5. The structural base of an antenna, including all bracing and appurtenances, but excluding the dish itself, shall be screened from public rights-of-way and adjoining properties by walls, fences, buildings, landscape, or combinations thereof not less than four feet high, so that the base and support structure are not visible from beyond the boundaries of the site at a height of six feet or below.

6. All wires and/or cables necessary for operation of an antenna or reception of a signal shall be placed underground, except for wires or cables attached flush with the surface of a building or the structure of the antenna.

7. Highly reflective surfaces shall not be permitted. All satellite dish antennas that are not screened shall be painted with as unobtrusive a color as possible.

8. No more than one antenna shall be permitted per parcel unless approved by the community development director.

9. No signage of any kind shall be posted or displayed on a wireless communication facility.

D. Permit Required. A use permit from the planning commission shall be required for the installation of all wireless communication facilities in all districts. In addition, a design review permit shall be required as per Chapter 17.108 BMC. Wireless communication facilities in planned development (PD) zoning district with residential uses shall be subject to the provisions of subsection (I) of this section. All use permit applications shall include:

1. A written definition of the area of service desired for coverage or capacity.

2. Documentation showing that the proposed facility would provide the needed coverage or capacity.

3. A map showing all technically feasible alternative sites from which the desired coverage could also be provided, along with an analysis of the feasibility of those alternative sites that compares visual impact with that of the proposed project. At a minimum, this analysis shall identify the location of all existing monopoles within a quarter mile of the proposed site, provide an explanation of why collocation has not been proposed at each of these sites, and assess the potential for building-mounted alternatives.

4. Photo simulations of the proposed project.

5. Written documentation demonstrating that emissions from the proposed wireless communications facility are within the limits set by the FCC.

6. Design that proposes the smallest and least visible antennas possible that will reasonably accommodate the operator’s objectives. The applicant shall disclose which antennas and support structures were evaluated and the process used to select the antenna and support structure.

E. Location Criteria. The following criteria shall apply to the siting and development of all new wireless communication facilities in order to mitigate any potential health, safety, urban design, neighborhood character or public access impacts:

1. Antennas attached to a roof shall maintain a 1:1 ratio for equipment setback (for example, a 10-foot-high antenna requires a 10-foot setback from facade) unless an alternative placement would reduce visual impact; be treated or screened to match mechanical equipment, stairs, elevator towers, or other background features and be camouflaged so that the

antennas are not visible from a public right-of-way; and not be mounted in direct line with significant view corridors.

2. Facilities shall not exceed a height of 12 feet above the maximum allowed height limit for the main building in the zoning district in which the facility is located.

3. Facilities shall not reduce existing parking on the site below the zoning district parking requirement.

4. When a monopole is adjacent to a residential use it must be set back from the nearest residential lot line a distance at least equal to its total height. In addition, it shall not exceed 1.5 feet in diameter at its base nor one foot at its top and the antennas shall not extend more than three feet from the center of the pole.

5. Collocation shall occur whenever reasonably feasible and aesthetically desirable. In order to facilitate future collocation of antennas for other service providers, the conditions of approval shall prohibit the applicant from entering into an exclusive lease for the use of the site. Collocation shall be discouraged when it will increase visual impacts. Service providers are encouraged to collocate with other facilities such as water tanks, light standards and other utility structures where the collocation is found to minimize the overall visual impact. Collocation of an antenna on a nonconforming structure shall not be considered to be an expansion of the nonconforming structure.

6. Any service provider facilities that are developed on vacant sites shall be temporary. When such sites are developed, these facilities shall be removed. Such facilities may be replaced with building-mounted antennas or other types of appropriate facilities, subject to review and approval by the city in accordance with this section.

7. Site location and development shall preserve the preexisting character of the surrounding buildings and land uses, the neighborhood and the zoning district as much as possible. Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized.

8. In determining whether to grant or deny approval for a wireless communications facility, the planning commission may require more stringent standards than the development standards of this chapter. The planning commission may attach such conditions as it considers necessary to ensure visual and land use compatibility with the surroundings so as to avoid adverse effects on the health, safety, and welfare of the community's

residents, to protect existing vegetation, and to minimize the proliferation of such facilities.

F. Design Review Standards. In addition to the requirements of Chapter 17.108 BMC, all wireless communication facilities, including but not limited to, equipment, antennas, poles, dishes, cabinets, structures, towers or other appurtenances shall employ a design that minimizes the visual impact by making use of the following or similar techniques:

1. The proposed facility shall be sited to be screened by existing development, topography or vegetation in such a way as to have the least visual impact possible taking into consideration all technically feasible alternatives.

2. The materials, textures and colors of new or remodeled structures shall be visually compatible with the predominant materials. Facilities shall have a nonreflective finish and shall be painted and/or textured to match the exterior of the building or background.

3. Mounting of facilities on the peaks of roofs or hilltops shall be avoided to the greatest extent possible and all other related equipment shall be screened or hidden from view. Additional new vegetation and its proper irrigation or other screening may be required as a condition of approval.

4. Antennas mounted on architecturally significant structures or significant details of a building should be covered by appropriate casing manufactured to match existing architectural features found on a building. Where feasible, antennas shall be placed directly above, below or incorporated into vertical design elements.

5. Equipment shelters or cabinets shall be placed underground to the greatest extent possible or screened from public view by using landscaping or materials and colors consistent with surrounding backdrop.

6. All wireless communication facilities and associated equipment must be regularly maintained.

7. Any exterior lighting shall be manually operated and used only during night maintenance or emergencies. The lighting shall be constructed, located, and oriented so that only the intended area is illuminated and off-site glare is eliminated.

G. Additional Design Review Criteria for H Overlay District. The following design review criteria shall also be applied to wireless communication facilities within the H overlay district:

1. The proposed wireless communication facility shall respect the visual relationship of architectural design elements in the surrounding area, including scale, height, rhythm of spacing, pattern on windows and doorways, building siting and relationship to landscaping, roof pitch, architectural style and structural details, materials, colors and textures.

2. Wireless communication facilities shall not be placed on a building with a landmark or contributing designation.

3. Antennas mounted on architecturally significant structures or a significant architectural detail of a building shall be covered by appropriate casings that match existing architectural features.

H. Required Findings. To approve a use permit for a wireless communication facility, the planning commission must find that:

1. The proposed location of the project and the conditions under which it would be operated and maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity.

2. Development of the proposed facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive resources, community character resources; or, that there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned (including alternative locations and/or designs) with less visual and/or other resource impacts, and that the proposed facility has been modified by conditions and/or project design to adequately minimize and mitigate its visual and other resource impacts.

3. The proposed facility is in compliance with all FCC regulations.

4. The proposed location and design of the project and the conditions under which it would be operated or maintained will be consistent with all elements of the Benicia general plan, other pertinent city ordinances and with any specific plan or overlay district that has been adopted for the area.

5. The proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be visually compatible with the physical design aspects including scale, height, materials, colors, and texture.

I. Additional Findings for Wireless Communication Facilities in R Districts. Wireless communication facilities are allowed in R districts only if the planning commission finds, in addition to all items in subsection (F) of this section, that:

1. In acknowledgement that an environmental determination has not been made regarding placement of a commercial facility in a residential zoning district, it has been disclosed in a required California Environmental Quality Act (CEQA) evaluation for the project that environmental impacts associated with the facility were determined to be less than significant.

2. The proposed antenna is located on a parcel with a nonresidential use.

3. The proposed antenna is located either:

a. More than 35 feet away from the nearest residential use; or at least one foot away from the nearest residential property line for every foot of monopole height, whichever is greater; or

b. More than 20 feet away from the nearest residential property line if the proposed antenna is mounted on an existing utility structure within a utility corridor. (Ord. 06-10 § 2; Ord. 87-4 N.S., 1987).

17.70.260 Hazardous materials.

A. Purpose. The following supplemental regulations are intended to ensure that the use, handling, storage and transport of hazardous substances comply with all applicable requirements of the California Health and Safety Code and that the city is notified of emergency response plans, unauthorized releases of hazardous substances, and any substantial changes in facilities or operations that could affect the public health, safety or welfare. It is not the intent of these regulations to impose additional restrictions on the management of hazardous wastes, which would be contrary to state law, but only to require reporting of information to the city that must be provided to other public agencies.

B. Definitions. For purposes of this section, “hazardous substances” shall include all substances on the comprehensive master list of hazardous substances compiled and maintained by the California Department of Health Services pursuant to Section 25282 of the California Health and Safety Code.

C. Permit Required. A use permit shall be required for any new commercial, industrial, or institutional use, accessory use, or major addition or alteration to an existing use that involves the manufacture, storage, handling, transport, or processing of hazardous substances in sufficient quantities that would require permits as hazardous chemicals under the Uniform Fire Code adopted by the city, with the following exceptions:

1. Underground storage of bulk flammable and combustible liquids is permitted, subject to the provisions of subsection (E) of this section; and

2. Hazardous substances in container sizes of 10 gallons or less stored or maintained for the purposes of retail or wholesale sales are exempt from these regulations. The community development director or the planning commission may request information on the procedures to be used to process, transport, and store hazardous substances in a safe manner prior to approval of a use permit.

D. Hazardous Materials Release Response Plans. All businesses located in the city and required by Chapter 6.95 of the California Health and Safety Code to prepare hazardous materials release response plans shall submit copies of all such plans, including any corrected plans or revised plans, to the fire department at the same time these plans are submitted to the public agency administering these provisions of the California Health and Safety Code. These submittal requirements shall be a condition of approval of a zoning permit for (1) new development where space may be occupied by such a business, and (2) any alteration or addition to an existing building or structure occupied by a business subject to these provisions of the California Health and Safety Code.

E. Underground Storage Tanks. Underground storage of hazardous substances shall comply with all applicable requirements of Chapter 6.7 of the California Health and Safety Code and Section 79.1113(a) of the Uniform Fire Code. Any business located in the city that uses underground storage tanks shall:

1. Notify the city dispatcher of any unauthorized release of hazardous substances immediately after the release has been detected. Such notification shall include the steps being taken to control the release; and

2. Notify the fire chief of any proposed abandoning, closing or ceasing operation of an underground storage tank and the actions to be taken to dispose of any hazardous substances.

These notification requirements shall be a condition of approval of a zoning permit for (1) new development that involves installation of underground tanks, and (2) any alteration or addition to an existing building or structure on a site where underground storage tanks exist.

F. Aboveground Storage Tanks. Aboveground storage tanks for any flammable liquid shall be allowed only at refinery or bulk storage plant locations with the approval of the fire chief. (Ord. 87-4 N.S., 1987).

17.70.270 Affordable housing density bonus.

A. Purpose. The purpose of the affordable housing density bonus[1] is to expand housing opportunities for very-low-[2], low[3]- and moderate[4]-income persons throughout the city. Additional purposes are as follows:

1. To provide increased residential densities to developers who guarantee that a portion of their housing development will be affordable by households of very low, low or moderate income;

2. To provide increased residential densities to developers that donate land to develop units for very-low-, low- or moderate-income households;

3. To ensure affordable units are constructed and located to appear similar to market-rate units;

4. To provide increased residential densities to developers that provide child care facilities; and

5. To provide concessions when needed to offset the costs of developing affordable housing for very-low-, low- and moderate-income households.

B. Determination of Bonus. Applicants who request a density bonus and agree to construct a residential project of five or more units shall be granted a density bonus, as specified by this subsection. All density bonuses referred to in this section are a specified percentage over the maximum density permitted in the base district.

1. A density bonus of 20 percent shall be granted to projects in which the following is included:

a. At least five percent of the total dwelling units of a housing development are provided to very-low-income households. An additional 2.5 percent density bonus shall be granted for each additional increase of one percent very-low-income units above five percent, to a maximum density bonus of 35 percent, as illustrated in Table 10.70.270-1, Application of Density Bonus for Very-Low, Low- and Moderate-Income Units; or

b. At least 10 percent of the total dwelling units of a housing development provided to low-income households. An additional 1.5 percent density bonus shall be granted for each additional increase of 1.5 percent low-income units above 10 percent, to a maximum density bonus of 35 percent, as illustrated in Table 10.70.270-1, Application of Density Bonus for Very-Low, Low- and Moderate-Income Units; or

c. Fifty percent of the total dwelling units of a housing development are provided to qualifying residents, defined by Section 51.3 of the Civil Code, as a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development[5].

2. A density bonus of five percent shall be granted to a condominium project or a planned unit development[6] that provides at least 10 percent of the total number of units to households of moderate income. An additional one percent density bonus shall be granted for every one percent of moderate-income units above 10 percent, up to a maximum of 35 percent, as illustrated in Table 10.70.270-1, Application of Density Bonus for Very-Low-, Low- and Moderate-Income Units.

Table 10.70.270-1

Application of Density Bonus For Very-Low-, Low- and Moderate-Income Units

Very-Low-Income Units		**Low-Income Units**		**Moderate-Income Units**	
% Very-Low-Income Units	Permitted % Density Bonus	% Low-Income Units	Permitted % Density Bonus	% Moderate-Income Condo/PUD Units	Permitted % Density Bonus
5	20	10	20	10	5
6	22.5	11	21.5	11	6
7	25	12	23	12	7
8	27.5	13	24.5	13	8
9	30	14	26	14	9
10	32.5	15	27.5	15	10
11	35	16	29	16	11
35% Maximum Density Bonus		17	30.5	17	12
		18	32	18	13
		19	33.5	19	14
		20	35	20	15
		35% Maximum Density Bonus		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
35% Maximum Density Bonus	

3. A density bonus of 15 percent shall be granted to applicants that donate sufficient land to provide at least 10 percent of the units for very-low-income occupants, subject to the requirements of this subsection. Density bonus shall increase by one percent for every additional one percent of very-low-income units above 10 percent, up to a maximum of 35 percent. All of the following conditions shall apply:

a. Donations shall be made to the city of Benicia or a developer previously identified and approved by the city.

b. Land must measure a minimum of one acre in size or be able to accommodate 40 units per acre.

c. Transferred land shall be within the boundary of the proposed development.

d. Transferred land shall be appropriately designated by the general plan for high-density residential development prior to final project approval.

e. Transferred land shall be zoned for high-density residential use prior to final project approval.

f. Transferred land shall be adequately served by infrastructure prior to final project approval.

C. Construction and Location of Affordable Units. All units that are constructed for very-low-, low- or moderate-income households shall meet the following minimum standards:

1. Distribution. Affordable dwelling units shall be reasonably interspersed among market-rate units within the same development.

2. Comparable Units. Affordable dwelling units must be generally comparable to market-rate units, including total square footage, bedroom size, closet space, amenities, and number of bathrooms, except in quality of interior “finish” materials (for example, floor and wall coverings). Affordable dwelling units shall measure no less than 90 percent of the average square footage of market-rate units with the same number of bedrooms.

3. Comparable Design. Affordable units shall be designed to reasonably reflect the exterior design of market-rate units in the same development.

4. Comparable Amenities. Residents of affordable units may not be charged for amenities not charged to other residents, including, but not limited to, access to recreational facilities, parking, cable TV, and interior amenities like dishwashers and microwave ovens. Optional services for all residents must be the same. Tenants of affordable units cannot be required to purchase additional services.

D. Affordability. Units constructed for targeted income households shall be made affordable as specified by this section, and as required by subsection (I) of this section, Affordable Housing Density Bonus Agreement.

1. Limits on Housing Costs. Units constructed for targeted-income households shall be made affordable and meet the housing cost limits, as follows:

a. Rents[7] for units targeted for very-low-income households shall not exceed 30 percent of 50 percent of the area median income[8].

b. Rents for units targeted for low-income households shall not exceed 30 percent of 60 percent of the area median income.

c. The purchase price for units targeted for moderate-income households shall be limited so that monthly housing costs[9] do not exceed 30 percent of 120 percent of the area median income. A 10 percent down payment on the purchase price may be required.

2. Continued Affordability. Units constructed for targeted-income households shall be occupied by very-low-, low-, or moderate-income households, consistent with the density bonus approved for the project. In addition, such units shall remain available and affordable, as follows:

a. Very-Low- and Low-Income Units. Units constructed for very-low-income and low-income households shall remain available and affordable to very-low- and low-income households for at least 30 years or the life of the structure, whichever is greater.

b. Moderate-Income Units. Units constructed for moderate-income households shall be owned and occupied by, and affordable to, moderate-income households for 10 years or the life of the structure, whichever is greater. Subsequent sale of moderate-income units shall comply with subsection (I)(7) of this section.

E. Child Care Facilities.

1. The city shall grant either of the following to projects that include a child care facility located on the premises of, as part of, or adjacent to the project and that otherwise meet the requirements of this section.

a. An additional density bonus that is an amount of square feet of residential space equal to or greater than the amount of square feet in the child care facility; or

b. An additional concession or incentive determined by the city that contributes significantly to the economic feasibility of the construction of the child care facility.

2. In order to receive the additional child care density bonus, the project shall comply with the following requirements:

a. The child care facility shall remain in operation for a period of time that is as long or longer than the period of time during which the density bonus units are required to remain affordable, in accordance with subsection (D)(1) of this section; and

b. Of the children who attend the child care facility, children from very-low-income, low-income, and moderate-income households shall equal

a percentage that is equal to or greater than the percentage of affordable dwelling units required to qualify for a density bonus, in accordance with subsection (B)(1) of this section.

Notwithstanding any requirement of subsection (B)(2) of this section, the city is not required to provide a density bonus or concession for a child care facility if it finds, based on substantial evidence, that the community has adequate existing child care facilities.

F. Development Concessions[10]. An applicant may request, and the city shall allow, development concessions for a project that meets the criteria for a density bonus, as described in subsection B of this section (Determination of Bonus) and provided by this section. The following requirements shall apply:

1. The city shall approve one or more concessions or incentives for a proposed project if the applicant has provided documented evidence that the waiver or modification is necessary to make the housing units economically feasible, as required by subsections (F)(3) and (F)(4) of this section. The city may deny one or more requested concessions or incentives if, based on substantial evidence, the city makes either of the following findings:

a. The concession or incentive is not necessary to ensure affordable housing costs, as defined in Health and Safety Code Section 50052.5, or to ensure rents in the targeted units are set as specified in subsection (D)(1) of this section.

b. The concession or incentive would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon the public health and safety, or physical environment, or any real property that is 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 low- and moderate-income households.

2. The number of city zoning or development standards that shall be waived or modified shall be consistent with the following table, Table 17.70.270-2, Affordable Housing Development Concessions:

Table 17.70.270-2

Affordable Housing Development Concessions*

Number of Concessions	Percentage Affordable Housing

	Very Low	Low	Moderate Condos and/o PUDs
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%
*Per SB 435, income categories cannot be combined to achieve a greater number of concessions than that identified in this table.			

3. The applicant shall provide documented evidence that any such concession is needed to sufficiently reduce the cost of the housing development, while passing on said reduction to future tenants and homeowners. Development concessions cannot be used to increase profit to a housing developer.

4. The planning commission shall approve proposed development concessions consistent with this subsection if all of the following findings can be made:

a. The applicant has submitted documented financial evidence that shows a waiver or modification of development standards is needed to make the housing units economically feasible;

b. A waiver or reduction in development standards will not result in a specific, adverse impact upon the health, safety or physical environment for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;

c. A waiver or reduction in development standards will not result in an adverse impact on any real property that is listed in the California Register of Historical Resources; and

d. The planning commission has considered the specific site for which a waiver or modification of development standards is requested and has determined the specified concession is required to allow for the use of a density bonus.

G. Parking Standards. If a project qualifies for a density bonus, an applicant may request reduced parking standards for the entire project site. Reduced parking standards may be requested and shall be approved even if a density bonus is not being requested. Reduced parking requirements shall include guest and handicapped parking, may be provided as tandem spaces, and may be

uncovered, provided the spaces are located on-site. Reduced parking standards shall be as follows:

1. One on-site parking space per unit for units with one bedroom or less.

2. One and one-half on-site parking spaces per unit for units with two bedrooms.

3. Two on-site parking spaces per unit for units with three or more bedrooms.

H. Other Development Standards. The applicant may request waiver of any additional development standards if the applicant provides documented evidence that such waivers are necessary to make the project economically feasible.

I. Affordable Housing Density Bonus Agreement. All applicants for projects that receive an affordable housing density bonus, development concession and/or reduction in parking standards, including a project consisting of contiguous properties, shall enter into an affordable housing density bonus agreement with the city of Benicia. All such agreements, prior to execution, are subject to approval by the city attorney. The affordable housing density bonus agreement shall be consistent with all other provisions of this section. Agreements shall also include the following provisions:

1. The total number of units that will be constructed and the number of units that will be made affordable to very-low-, low- or moderate-income households shall be clearly stated;

2. The affordable units shall remain available to, and occupied and affordable by, very-low- and low-income households for at least 30 years and for moderate-income households at least 10 years or the life of the structure, whichever is greater, consistent with subsection (D) of this section, Affordability;

3. The units affordable by very-low-, low- or moderate-income households shall be reasonably interspersed throughout the development and shall be identified on building plans submitted to the community development department and described in the application for a density bonus;

4. Resale controls shall be included as a deed restriction consistent with subsection (I)(7) of this section;

5. If reduced parking standards have been applied to the project, the number of bedrooms of each unit shall be identified;

6. The city or designee shall consider the assets and income of prospective households, pursuant to the state's Housing and Community Development (HCD) standards set forth in the definition of "income eligibility";

7. The applicant shall provide documented evidence to the city of Benicia community development department that initial occupants of all very-low- and low-income rental units meet the necessary income qualifications. The property owner shall provide an annual report to the Benicia housing authority certifying tenants of qualifying rental units meet the income and rent limit requirements;

8. Every purchaser of moderate-income owner-occupied units shall certify the unit will be the purchaser's primary place of residence, and every renter of low- or very-low-income units shall certify the unit will be occupied by the household renting the unit;

9. Initial sales price and fair market value of units at time of initial sale shall be stipulated for all units constructed for moderate-income owner occupants; and

10. The applicant shall provide documented evidence to the city community development department that initial owner occupants of moderate-income units meet the necessary income qualifications. Subsequent sale of moderate-income units shall be limited to moderate-income households, as approved by the city community development department. In addition, sale proceeds of moderate-income units sold after the first 10 years of occupancy by moderate-income household(s) shall be distributed as follows:

a. The initial owner is entitled to receive the value of the down payment, documented improvements to the property and a proportional share of the unit's appreciation, in accordance with the formula in Government Code Section 65915.

b. The city shall receive its proportional share of appreciation of the unit in addition to the amount of the original subsidy. The city shall use the proceeds within three years to promote affordable, owner-occupied housing. Use of said proceeds may be accomplished in cooperation with the Benicia housing authority and/or other similar organizations dedicated to the provision of affordable housing in Benicia.

J. Inclusionary Ordinance. BMC 17.70.320, Inclusionary housing, shall continue to apply to all development projects, whether or not a density bonus has been requested and received.

K. Projects Divided by District Boundaries. If the project involves land divided by district boundaries, including noncontiguous properties, the number of dwelling units permitted in the development shall be the sum of the dwelling units permitted in each of the districts. Within the project, the permitted number of dwelling units may be distributed without regard to the underlying density regulations.

L. Transfer of Density Permit Requirements. A noticed public hearing shall be required for any proposal to transfer density rights between contiguous or noncontiguous properties if the resulting density exceeds 125 percent of the number of units normally permitted by the base district. The planning commission may recommend, and the city council may approve, such a transfer of density if the following findings can be made:

1. That the project as proposed will materially assist in accomplishing the goal of providing affordable housing opportunities in the city;

2. That the project would not lead to overconcentration of persons and families of moderate, low, or very low income; and

3. That granting the increased density will not adversely affect the general plan, cause significant adverse effects on the environment, adversely affect solar access to the neighboring property, or violate relevant regulations of this code. (Ord. 06-15; Ord. 04-2 § 3; Ord. 92-9 N.S. § 19, 1992; Ord. 87-4 N.S., 1987).

17.70.280 Manufactured homes.

A. Purpose. Manufactured homes are part of the housing stock of the city of Benicia. It is the intent of the city to provide opportunities for the placement of manufactured homes in R districts and in manufactured home parks, and to ensure that such manufactured homes are designed and located so as to be harmonious within the context of the surrounding houses and neighborhood.

B. General Requirements. Manufactured homes may be used for residential purposes as follows:

1. If such manufactured homes are located in an approved manufactured home park in conformity with the conditions imposed upon development and use of the manufactured home park; or

2. If such manufactured homes are located in an R district; or

3. If such manufactured homes have been approved by the community development director for a location in an OS district or an I district as caretaker housing.

All manufactured home parks shall have a minimum lot area of four acres and may be allowed only through approval of a PD district under the provisions of Chapter 17.44 BMC. Manufactured homes also may be used for temporary uses, subject to the requirements of a temporary use permit issued under Chapter 17.104 BMC.

4. Location Criteria. Manufactured homes shall not be allowed:

a. As a second or additional unit on an already developed lot;

b. As an accessory building or use on an already developed lot, except for a caretaker's quarters in an I district;

c. On lots in an H historic overlay district.

5. Design Criteria. A manufactured home shall be compatible in design and appearance with structures in the vicinity and shall meet the following standards:

a. It must be built on a permanent foundation approved by the building official;

b. It must have been constructed within 10 years of the date of application for a zoning permit, and must be certified under the National Manufactured Housing Construction and Safety Standards Act of 1974;

c. The unit's skirting must extend to the finished grade;

d. Exterior siding must be compatible with adjacent structures, and shiny or metallic finishes are prohibited;

e. The roof must be of concrete or asphalt tile, shakes or shingles complying with the most recent editions of the Uniform Building Code fire rating approved in the city of Benicia;

f. The roof must have eaves or overhangs of not less than one foot;

g. Required covered parking shall be compatible with the manufactured home design and with other buildings in the area.

C. Cancellation of State Registration. Whenever a manufactured home is installed on a permanent foundation, any registration of said manufactured home with the state of California shall be canceled, pursuant to state laws and regulations. Before any occupancy certificate may be issued for use of such a manufactured home, the owner shall provide to the building official satisfactory

evidence showing that the state registration of the manufactured home has been or will, with certainty, be canceled; if the home is new and has never been registered with the state, the owner shall provide the building official with a statement to that effect from the dealer selling the home. (Ord. 92-9 N.S. § 20, 1992; Ord. 89-1 N.S. § 32, 1989; Ord. 87-4 N.S., 1987).

17.70.290 Game centers.

Use Permit Required. In addition, the following performance standards shall apply to the operation of game centers, including mechanical or electronic games or any other similar machine or device.

A. Purpose. The intent of these performance standards, in particular the use permit requirement, is to provide a procedure to control the location and operation of game centers, to require adequate adult supervision, and to govern hours of operations so as not to allow school children to patronize game centers during school hours.

B. Use Permit Required. A use permit, to be approved by the planning commission, is required to install, operate or maintain three or more mechanical or electronic games. The use permit is valid only for the number of games specified; the installation or use of additional games requires a new or amended use permit. The planning commission may impose reasonable restrictions on the physical design, location and operation of a game center in order to minimize the effects of noise, congregation, parking and other nuisance factors that may be detrimental to the public health, safety and welfare of the surrounding community.

C. Adult Manager. At least one adult manager, of at least 19 years of age, shall be on the premises during the time a game center is open to the public.

D. Hours of Operation for Minors Between Six and 18 Years of Age. No game center owner, manager or employee shall allow a minor between six and 18 years of age to play a mechanical or electronic game machine during the hours the Benicia public schools are in session, or 9:00 p.m. on nights preceding school days, or 10:00 p.m. on any night. It is the responsibility of the owner or manager of the game center to obtain a current schedule of school days and hours. (Ord. 93-14 N.S. § 5, 1993; Ord. 87-4 N.S., 1987).

17.70.300 Animals.

A. Purpose. Supplemental regulations governing the care and keeping of animals are intended to provide for the compatibility between such animals and neighboring land uses. These are in addition to the general requirements governing animals established by BMC Title 6.

B. Domestic and Exotic Animals. In an R district, or in conjunction with any residential uses in any other district, domestic and exotic animals, as defined by this title, are subject to the following requirements in addition to the regulations of BMC Title 6.

1. Such animals, except cats, shall not be permitted to run at large, but shall be, at all times, confined within a suitable enclosure or otherwise be under the control of the owner of the property; and

2. Any enclosure shall be located in an interior side or rear yard and set back at least five feet from the property line; and

3. The number of allowed animals, as defined by this title, may not exceed the limits set forth in BMC Title 6 unless the property owner has obtained an animal keepers permit and a staff level use permit.

C. Other Animals.

1. In an R district, or in conjunction with any residential use in a C district, one horse, as defined in BMC Title 6, may be kept for each 20,000 square feet of open space, subject to securing a use permit. Paddock and corral areas shall be at least 20 feet from the property line, and stables shall be at least 40 feet from the property line.

2. In an OS district, livestock, farm animals, domestic animals and exotic animals may be kept on a lot 20,000 square feet or more in area, subject to the following requirements:

a. The number of domestic or exotic animals shall not exceed six;

b. Such animals shall not be permitted to run at large, but shall be, at all times, confined within a suitable enclosure; and

c. Any enclosure shall be set back at least 25 feet from the property line. (Ord. 08-02 § 1; Ord. 87-4 N.S., 1987).

17.70.310 Fences and walls.

All fences and walls shall be constructed in a sound and workmanlike fashion using new or good used material, and shall be maintained erect and in a state of good repair. Any dilapidated, dangerous, or unsightly fence or wall shall be repaired or removed. (Ord. 87-4 N.S., 1987).

17.70.320 Inclusionary housing.

A. Findings. The city finds that Benicia is experiencing a housing shortage for very-low- and low-income households. A goal of the city is to ensure development of an adequate supply and mix of new housing to meet future

housing needs. Policies within the current housing element (as amended May 2003) provide incentives to developers producing affordable housing, including: density bonuses, permit processing “fast tracking,” relaxation of minimum lot standards, waiver of covered parking requirements, and modification of development standards.

Very-low- and low-income households that include persons who work and/or live within the city are typically unable to locate housing at prices they can afford and are excluded from living in the city. The city finds that the high cost of newly constructed housing does not provide housing affordable by very-low- and low-income households, and that continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land.

It is the city’s preference that developers comply with this section by actually building the affordable dwelling units required for their project. The lack of land available for affordable housing projects and the additional costs associated with development of affordable housing projects by the city or nonprofit developers requires that any in-lieu fee paid be calculated at a rate to provide sufficient funds to actually build affordable housing.

The city further finds that the housing shortage for persons of very low and low incomes is detrimental to the public welfare, and further that it is a public purpose of the city, and public policy of the state of California as mandated by the requirement for a housing element of the city’s general plan, to make available an adequate supply of housing for persons of all economic segments of the community.

B. Purpose. The purpose of this section is to enhance the public welfare and assure that further housing development contributes to the attainment of the housing goals of the city by increasing the production of units available to, and affordable by, households of very low and low income, as herein defined. In order to ensure that a balance of housing for all economic segments of the community remains available and is increased as far as possible to meet the need documented in the housing element, the city declares that a percentage of inclusionary units shall be developed in every residential development, or land dedicated for residential development, or an in-lieu fee shall be collected, or some combination of the foregoing shall be required, to support the development of lower-income housing.

C. Definitions.

“Accessory unit” shall mean an accessory dwelling unit as defined in BMC 17.70.060.

“Affordable” shall mean that the relevant dwelling units are available on terms such that the housing cost or affordable rent is 30 percent or less of the income of low- or very-low-income households based on the figures produced by the U.S. Department of Housing and Urban Development for Solano County.

“Affordable rental restriction agreement” means legal restrictions by which the rents for inclusionary rental units will be controlled to ensure that the rents remain affordable to very-low- or low-income households for a period of not less than 30 years.

“Affordable rents” means housing that is affordable, based upon monthly rent of 30 percent or less of the income of low- or very-low-income households based on the figures produced by the U.S. Department of Housing and Urban Development for Solano County.

“Area median income” means the most recent area median income adjusted by household size based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

“At one location” means all adjacent land owned or controlled by the developer, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way, or separated only by other land of the developer.

“Capital improvements” means the fair market value of any improvement, appliance, fixture, or equipment when considered as an addition or fixture to the property (i.e., the amount by which said improvement, appliance, fixture, or equipment enhances the market value of the property) at the time of sale, minus the value of any improvement, appliance, fixture or equipment which the city determines resulted from deferred maintenance costs or building code violations.

“City” means the city of Benicia.

“CPI” or “Consumer Price Index” means the U.S. Bureau of Labor Statistics annual average CPI−U (Consumer Price Index for all Urban Consumers) for the San Francisco-Oakland-San Jose Area, for the Housing Series, Home Owners Cost Component.

“Density bonus” means an increase in the number of units per acre otherwise allowed for any particular parcel.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city permits and approvals. “Developer” also includes developers’ successors in interest to the real property.

“Discretionary permit” means any permit or license issued by the city of Benicia after the effective date of the ordinance codified in this section for a project which requires the exercise of judgment or deliberation wherein the city decides to either approve or disapprove a particular activity in accordance with applicable laws including but not limited to a development agreement, amended development agreement, tentative map, use permit, or design review, and excluding minor changes to previously granted approvals.

“Dwelling unit” means a structure or portion of a structure designed for occupancy by one household.

“For-sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

“HCD” means the California Department of Housing and Community Development.

“Housing authority” means the housing authority of the city of Benicia.

“Housing cost” means the monthly mortgage principal and interest, property taxes and assessments, fire and casualty insurance covering replacement value of property improvements, property maintenance and repairs, a reasonable allowance for utilities, owner association fees, and space rent if the dwelling is situated on rented land.

“HUD” means the U.S. Department of Housing and Urban Development.

“Inclusionary unit” means an ownership or rental dwelling unit as required by this section, which is affordable to very-low- or low-income households.

“Income eligibility” shall mean the countable annual household income and resources of very-low- and low-income households, as defined by HCD at C.C.R. Sections 6914 and 6916, or such other eligibility factors as may be imposed by a state or federal funding source applicable to the dwelling unit.

“In-lieu housing fee” means a fee paid to the city’s affordable housing trust fund to provide affordable housing opportunities to very-low- and low-income households.

“Low-income households,” for the purposes of this section, are defined as those households earning up to 80 percent of the most recent area median income adjusted by household size based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

“Market rate unit” means an ownership or rental dwelling unit which is not restricted to those prices or rents affordable to very-low- or low-income households.

“Percent” or “Percentages.” In applying percent or percentages referred to in this section, any decimal fraction less than 0.50 may be disregarded and any decimal fraction greater than or equal to 0.50 shall be rounded up to the next whole number.

“Resale control agreement” means legal restrictions by which the inclusionary units will be controlled to ensure that the unit remains affordable to very-low- or low-income households for a period of not less than 30 years.

“Residential development” means any development with dwelling units or lots at one location intended and designed for permanent occupancy including, but not limited to, single-family dwellings, apartments, multiple dwelling units, group of dwellings, condominium developments, townhouse developments, cooperatives, or land subdivisions; conversions from nonresidential use to residential use; or conversions from rental units to ownership units. “Residential development” includes any development with dwelling units or lots for which discretionary approvals or building permits have been applied for or granted within any 12-month period that begins after the effective date of the ordinance codified in this section, which development shall be considered to be a single project for CEQA purposes. “Residential development” does not include remodeling, rehabilitation or maintenance.

“Section 8” means the U.S. Department of Housing and Urban Development’s Section 8 voucher or home ownership programs pursuant to 42 U.S.C. 1437f, as they may be amended, or any successor program.

“Very-low-income households,” for the purposes of this section, are defined as those households earning up to 50 percent of the most recent area median income adjusted by household size based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

D. General Requirements for New Residential Development.

1. Any residential development of for-sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied by, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half

of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low- or low-income households. When the number of inclusionary units to be provided is an odd number (e.g., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all or part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for-sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units at appropriate price or rent levels, the term of affordability, provision for the city's income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for-sale unit development and/or phases of a development shall be constructed concurrently with or prior to the construction of market rate units, unless the city council determines an alternative phasing schedule to facilitate affordable housing development and the developer enters into a written agreement setting forth terms for satisfaction of the inclusionary housing requirements. Each phase of a development shall include the same or greater proportion of inclusionary units as are required for the total development.

3. Except as otherwise permitted in this section, all inclusionary units shall be reasonably dispersed within the development and shall be comparable to the design of market rate units in terms of numbers of bedrooms, appearance, materials, and finished quality. The number of bedrooms for the inclusionary units shall be considered comparable if the following minimum requirements are achieved:

a. Five percent of the inclusionary units, with the exception of accessory units referred to in subsection (J) of this section, must be four-bedroom units;

b. Twenty-five percent of the inclusionary units, including accessory units, must be three-bedroom units;

c. Forty percent of the inclusionary units, including accessory units, must be two-bedroom units;

d. Twenty percent of the remaining inclusionary units must be at least one-bedroom units;

e. The remaining inclusionary units may be any bedroom size categories.

The following table demonstrates the inclusionary requirements for projects with 10 or less inclusionary units:

Allocation of Bedroom Mix for Projects with 1 – 10 Inclusionary Units

Total # of Inclusionary Units	# of One-Bedroom Units Required	# of Two-Bedroom Units Required	# of Three-Bedroom Units Required	# of Four-Bedroom Units Required	Optional # of Bedrooms I Addnl. Unit
1		1			
2		1	1		
3	1	1	1		
4	1	2	1		
5	1	2	1		1
6	1	2	2		1
7	1	3	2		1
8	2	3	2		1
9	2	4	2		1
10	2	4	3	1	

* The applicant has the option to determine the number of bedrooms in the additional unit.

The community development director shall have the discretion to adjust the above minimum percentages due to site or design constraints, public funding source restrictions pertinent to very-low- or low-income units for developments containing market rate units with less than four bedrooms, or to comply with all applicable city ordinances; provided, that a mix of units in terms of numbers of bedrooms is achieved which will serve the affordable housing needs of the city as reflected in the city's housing element, the State Consolidated Plan, and the Benicia housing authority annual and five-year plans.

4. The developer shall have the option, with the approval of the city council, (a) to transfer credit for inclusionary units constructed at one location within the city to another location within the city to satisfy the requirements of this section, (b) to apply credits for extra inclusionary units constructed by the developer within the city that exceed the number of units that the developer is required under this section to construct ("extra unit credits") to another development in the city constructed by the developer or by an affiliate of the developer, and (c) to transfer extra unit credits to third party developer(s) to be applied to the transferee's development. Except as otherwise provided in this section, the inclusionary requirements must be satisfied with construction of units of an equivalent number and level of affordability and shall be comparable to the design of market rate units in terms of number of bedrooms, appearance, materials, and finished quality. Except as otherwise provided in this section, these inclusionary units must be constructed prior to issuance of a certificate of occupancy for any market-rate unit in the project.

5. The developer shall have the option, with the approval of the city council, in a homeownership development, of constructing rental units in a number sufficient to meet the inclusionary requirements of the project pursuant to this section. Except as herein provided, these inclusionary rental units shall be subject to subsection (E) of this section.

6. The city shall make available the annual maximum rents and the maximum allowable purchase prices, as defined in subsections (E) and (F) of this section. The established prices and rents for inclusionary units shall generally be based on and shall not exceed the following assumptions regarding household size in relation to the number of bedrooms per unit: 1.0 occupant per studio unit; 2.0 occupants per one-bedroom unit; 3.0 occupants per two-bedroom unit; 4.0 occupants per three-bedroom unit; and 5.0 occupants per four-bedroom unit; provided however, that the city shall have the discretion to establish annual maximum rents and allowable purchase prices based on actual or anticipated occupancy of the inclusionary units in order to facilitate maximum affordability levels.

7. To protect the privacy of the families and to the extent permitted by law, the city and its designee(s) shall keep confidential the personal identifying information of the families occupying an inclusionary unit.

E. Inclusionary Unit Requirements for Rental Developments.

1. The inclusionary rental units shall only be offered to and occupied by low - and very-low-income households. Rent for the low-income units shall be determined as follows: The average of the rent of all low-income units in the residential development shall be the price affordable to households with an income of not more than 75 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. In order to achieve this average, no unit may be rented at or above a price affordable to a household with an income at 80 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. In addition, if multiple units affordable to low-income households are required to be produced, at least one unit shall be rented at a price affordable to households with an income of not more than 70 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

Rent for the very-low-income units shall be determined as follows: The average of the rent of all very-low-income units in the residential development shall be the rent affordable to households with an income no more than 45 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. In order to achieve this average, no unit may be rented at or above a price affordable to a household with an income at 50 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. In addition, if multiple units affordable to very-low-income households are required to be produced, at least one unit shall be rented at a price affordable to households with an income of not more than 40 percent of the most recent area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

For residential developments where only one inclusionary unit is required to be built, the unit shall be rented at a price affordable to households with an income of not more than 60 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. For residential developments where two inclusionary units are required to be built, one unit shall be rented at a price affordable to households with an income of not more than 75 percent of the

area median income and the other shall be rented at a price affordable to households with an income of not more than 45 percent of the area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County. For residential developments where an odd number of inclusionary units are required to be built, the odd unit shall be rented at a price affordable to households with an income of not more than 60 percent of area median income based on figures produced by the U.S. Department of Housing and Urban Development for Solano County.

2. The city or its designee(s) shall screen applicants for the inclusionary rental units and certify their income eligibility. The developer or its designee (s) shall retain final discretion in the selection of the very-low- or low-income households; provided, however, that the same rental terms and conditions (except rent levels and income) are applied to tenants of inclusionary units as are applied to all other tenants, except as required to comply with government subsidy programs. Notwithstanding any other provision of this subsection, in the screening and selection process for the inclusionary rental units, the city, developer, and/or their designee(s) shall comply with all applicable state and federal fair housing laws. Discrimination based on any subsidies received by the prospective tenant is expressly prohibited.

3. Commencing with issuance of each certificate of occupancy and continuing until expiration of the affordable rental restriction agreement, the developer or its designee(s) shall provide an annual report to the city. The annual report shall provide the following information: (1) the address, including apartment number and zip code; (2) the date of completion of the unit and size of the unit (number of bedrooms); (3) the initial and current rent level of the household; (4) the current income level of the household and the number of persons in the household; (5) the term of the affordability restrictions pursuant to this section or the requirements of any funding source, whichever is more restrictive; (6) the date the affordability restrictions were recorded and the name of the recorded documents; (7) the name and address of the owner and manager (if any); and (8) the date of issuance of the certificate of occupancy. The city or its designee(s) shall monitor that rent level requirements of this section have been met.

4. For residential development of for-rental units where there is no financial assistance from the city or a type of assistance specified in the city’s density bonus law, the provisions cited in subsections (D)(1) through (7) and (E)(1) through (3) shall not apply.

For residential development of for-rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory

relief, and/or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, subsections (D) and (E) shall apply.

F. Inclusionary Unit Requirements for Ownership Developments.

1. The inclusionary ownership units shall only be offered to, sold to, and sold at prices affordable to households who meet the income eligibility requirements at the time of sale. Prices for the low-income units shall be determined as follows: The average of the price of all low-income units in the residential development shall be the price affordable to households with an income of not more than 75 percent of the area median income. In order to achieve this average, no unit may be priced at or above a price affordable to a household with an income at 80 percent of the area median income. In addition, if multiple units affordable to low-income households are required to be produced, at least one unit shall be priced at a price affordable to households with an income of not more than 70 percent of the area median income.

Prices for the very-low-income units shall be determined as follows: The average of the price of all very-low-income units in the residential development shall be the price affordable to households with an income no more than 45 percent of the area median income. In order to achieve this average, no unit may be priced at or above a price affordable to a household with an income at 50 percent of the area median income. In addition, if multiple units affordable to very-low-income households are required to be produced, at least one unit shall be priced at a price affordable to households with an income of not more than 40 percent of the most recent area median income.

For residential developments where only one inclusionary unit is required to be built, the unit shall be priced at a price affordable to households with an income of not more than 60 percent of the area median income. For residential developments where two inclusionary units are required to be built, one unit shall be priced at a price affordable to households with an income of not more than 75 percent of the area median income and the other shall be priced at a price affordable to households with an income of not more than 45 percent of the area median income. For residential developments where an odd number of inclusionary units are required to be built, the odd unit shall be priced at a price affordable to households with an income of not more than 60 percent of area median income.

To increase the pool of eligible households, a developer may sell the affordable dwelling units (1) to households who have incomes below the

specified percentage of area median income and/or (2) at prices below that required by this subsection.

2. The developer or its designee(s) shall notify the city of the availability of the ownership inclusionary units when the units are available for sale. The city or its designee(s) shall advertise the availability of the inclusionary units to the general public. The city or its designee(s) shall review the assets and income of prospective purchasers who have entered into a written contract to purchase one of the ownership inclusionary units. The city or its designee(s) shall certify the income eligibility of prospective purchasers through an application process. The developer or its designee(s) shall retain final approval in the selection of the qualified purchasers. Discrimination based on any subsidies received by the prospective purchaser is expressly prohibited.

3. Prior to close of escrow for each unit, the developer or its designee(s) shall provide a report to the city which includes the following information: (1) the address of the unit and zip code; (2) the size of the unit (number of bedrooms); (3) the sales price; whether the unit is considered very low or low income; and the specified percentage of area median income designated for that dwelling unit; (4) the income level of the purchaser and the number of persons in the household; and (5) the term of the affordability restrictions pursuant to this section or the requirements of any funding source, whichever is more restrictive. Within 10 business days after close of escrow, the developer or its designee(s) shall provide a report to the city which includes the following information: (1) the date the affordability restrictions were recorded with the Solano County recorder’s office and the name of the recorded documents; (2) the name of the owner(s) of the inclusionary unit; and (3) the date of actual or expected occupancy by the household. The above two reports shall be provided for each unit until all units have been sold. The city or its designee(s) shall at least annually monitor purchase prices, number of units at the required affordability levels, owner-occupancy, and the expiration of the terms of affordability.

G. Eligibility Requirement.

1. In establishing eligibility for the rental inclusionary units and ownership inclusionary units, the city or its designee(s) shall consider the assets and income of the household pursuant to HCD standards as set forth in the definition of “income eligibility” in this section.

2. Every purchaser of an inclusionary unit shall certify that the unit is being purchased for the purchaser’s primary place of residence. Every renter of a rental inclusionary unit shall certify that the unit shall be or is being occupied by those renting the unit.

H. Control of Resale.

1. For Sale Units.

a. A resale control agreement setting forth the applicable terms of this section shall be recorded with the Solano County recorder's office for each for-sale inclusionary unit. In order to maintain the availability of the for-sale dwelling units to be constructed pursuant to the requirements of this section, the city shall impose the following resale conditions for a period of 30 years from recordation of each resale control agreement, which 30-year period shall start over with each resale. The price received by the seller of an inclusionary unit shall be limited to his or her initial purchase price, plus a percentage increase based on any increase in the Consumer Price Index from the date of the property purchase to the date the property is sold, plus an amount to cover capital improvements. The seller shall not levy or charge any additional fees nor shall any "finder's fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.

b. The seller of an inclusionary unit shall sell said unit to a household in the same or lower income category as the unit was originally designated. The seller of the unit shall immediately notify the city and the Benicia housing authority upon the listing of the seller's property for sale. Within 10 days of notification that the property has been listed, the city and the Benicia housing authority shall provide the seller or seller's agent a list of any qualified and eligible potential purchasers known to the city or the Benicia housing authority.

The city shall have 90 days from the date the property is listed by the seller either to purchase the property and reserve the unit for a household within the same or lower income category as the unit was originally designated; or to find an eligible buyer. The income of the new household shall be certified by the city or its designee(s).

If the city decides not to exercise its purchase option, and the seller is unable to find any eligible buyers after both listing the property and marketing and advertising the sale of the property to buyers in the appropriate income category for a minimum of 90 days, the seller may rent the property to a household within the same or lower income category as the unit was originally designated. The seller shall provide the annual reports required by subsection (E)(3) of this section for as long as the dwelling unit remains rented.

c. The owner of any inclusionary unit shall attach and legally reference in the grant deed conveying title of any such inclusionary unit a declaration of restrictions stating the restrictions imposed pursuant to this section. The city shall provide a form declaration of restrictions, but failure to provide the form does not abrogate the owner's obligation to record the declaration.

The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions as required by this section.

d. The resale control agreement shall provide that if the unit is no longer owner-occupied the unit shall be occupied by and provided at an affordable rent to a household in the same income category for which the unit was designated. If the unit is rented, the homeowner's annual report shall include information required by the annual report for rental units, as appropriate.

2. Rental Units. An affordable rental restriction agreement setting forth the applicable terms of this section shall be recorded with the Solano County recorder's office for each inclusionary rental unit. The affordable rental restriction agreement shall provide that the rental units be made available at specified affordable rents to, and be occupied by, very-low- or low-income persons as required by this section for a period of at least 30 years, and such terms shall be binding on any subsequent purchasers.

The owner of any inclusionary rental unit shall attach and legally reference in the grant deed conveying title of any such inclusionary unit a declaration of restrictions stating the restrictions imposed pursuant to this section. The city shall provide a form declaration of restrictions, but failure to provide the form does not abrogate the owner's obligation to record the declaration.

The declaration of restrictions shall include all applicable occupancy restrictions, prohibitions, and terms of the affordable rental restriction agreement as required by this section.

I. Land Dedication Option.

1. Dedication. The city council may allow a developer to make an irrevocable offer of dedication to the city of sufficient land to satisfy the affordability requirement under this section. Such land shall be economically feasible and physically suitable for development of the required inclusionary units prior to dedication of the land including, but not limited to: the site shall be of sufficient size, general plan designation, and zoning to accommodate the required inclusionary units; the site shall be

fully improved with infrastructure, frontage improvements (curb, gutter, and walk), paved street access, utility (water, sewer, gas, and electric) service connections stubbed at property line(s), and such other improvements as may be necessary for development of the required inclusionary units or required by the city; the site shall be graded to a two-percent back-to-front slope or improved with retaining walls or other improvements to provide an equivalent developable area; and all fees necessary for development of the required inclusionary units shall be paid. The amount of land dedicated shall be sufficient to provide the same number, type, and bedroom distribution of inclusionary units at the same affordability levels that would otherwise be required by this section. Thus, in order to provide a mechanism for financing the construction of the inclusionary units, a developer will be required to provide more land than otherwise required for the physical siting of the inclusionary units or to provide funds to construct the units.

The city shall have the discretion to adjust the number of inclusionary units produced based on such factors as site or design constraints or to comply with all applicable city ordinances. The developer must identify the land to be dedicated no later than the application for tentative map approval, or if not applying for a tentative map, prior to design review approval. The city may approve, conditionally approve or reject such offer of dedication of any specific property. If the city rejects such offer of dedication, the developer or its designee(s) shall be required to meet the affordable housing obligation by other means set forth in this section.

Within one year from the date of conveyance to the city, the city council shall determine, at its discretion, whether the property dedicated to the city pursuant to this subsection shall be (a) developed by the city to produce the required number of inclusionary units; (b) conveyed to the developer or third parties who shall enter into an agreement with the city to produce such inclusionary units; or (c) sold and the sale proceeds deposited in the affordable housing trust fund for use pursuant to subsection (K)(6) of this section. The production of units by the city, developer, or third party shall be completed within two years from the date of the city council's determination.

2. Developer Option for Dedicated Land. Notwithstanding the provisions of subsection (I)(1) of this section, if a developer has complied with this section by dedicating land, the developer may obtain an option from the city council to develop the affordable housing units referred to in subsection (I)(1) on the dedicated land by paying an option fee in an amount to be determined by the city council. The term of the option shall be one year from the date such option fee is paid to city. At any time during the option

term, the developer may submit plans to develop the affordable housing units on the dedicated land that meet the requirements of this section; provided, that such plans comply with all applicable city ordinances; and provided further, that the developer commits to construct such affordable housing units within two years following the option term, the city council shall reconvey the dedicated land to the developer to allow the construction of such units.

J. Accessory Unit Option.

1. Accessory Units Which May Count Towards Meeting the Developer's Inclusionary Obligation. For single-family detached ownership developments, accessory dwelling units may be used, at the city's sole discretion, in meeting the inclusionary units obligation; provided, that the accessory units meet the requirements of subsections (D), (E), and (H) of this section. The deed restriction for such an accessory unit shall prohibit the owner from renting out the accessory unit at a rental rate higher than: for a very-low-income unit, the rent shall be affordable to a household at or below 50 percent of the area median income; for a low-income unit, the rent shall be affordable to a household at or below 80 percent of the area median income. The owner of a deed-restricted accessory unit shall not be required to rent such unit, but if the unit is rented, the allowable rent shall be determined in accordance with this subsection, and rental of the unit shall be subject to the restrictions of subsections (E)(2) and (E)(3) of this section.

2. Accessory Units Which Will Not Count in Determining the Developer's Inclusionary Obligation. Accessory dwelling units with deed restrictions recorded with the Solano County recorder's office which prohibit the owner and subsequent purchasers, for a period of not less than 30 years from the date the deed restriction is recorded, from renting out the accessory unit at a rental rate higher than the rent affordable to a household at 80 percent of the area median income, but which do not otherwise comply with subsections (D), (E), and (H) of this section, shall not be counted as inclusionary units; however, such units will not be counted as market rate units in determining the developer's inclusionary obligation.

K. In-Lieu Fee Option.

1. General. The city council may allow a developer to meet the requirements of this section by paying an in-lieu housing fee. At the time of application for a discretionary or building permit, whichever comes first, a developer desiring to pay the in-lieu fee shall submit a request to pay the in-lieu fee along with a report identifying all overriding conditions impacting the project that prevent the developer from meeting the requirement to

construct the inclusionary units; sufficient independent data, including appropriate financial information, that supports the developer's claim that it is not feasible to construct the required inclusionary units; and a detailed analysis of why the various concessions and incentives identified in subsections (L), (M), (N), (O), (P), and (Q) of this section cannot mitigate the developer's identified conditions that are preventing him/her from constructing the inclusionary units. The community development director shall review all such requests and prepare a recommendation for the city council. Such requests shall be considered on a case-by-case basis by the council and may be approved, at the council's sole discretion, if the council determines that there are overriding conditions impacting the project that prevent the developer of a residential development from meeting the requirement to construct inclusionary units and that payment of the in-lieu fee will further affordable housing opportunities.

Dedication of land may, at the discretion of the city council, reduce the level of the in-lieu housing fee payable to the city. The in-lieu fee, or combination of land dedication and in-lieu fee, shall be sufficient to enable the city or its designee(s) to satisfy, within a reasonable time, the inclusionary requirements of the developer's project by providing sufficient funds, or a combination of sufficient land and funds, for construction of the required units.

2. Time of Payment. If fees are to be paid in lieu of providing affordable housing or dedicating land, the fees shall be paid simultaneously upon issuance of building permits for the market-rate units in the residential development. If building permits are issued for only part of a residential development, the fee amount shall be based only on the number of permitted units. For land subdivisions involving lot sales, fees shall be paid prior to approval of a final subdivision map.

3. Applicable Fee. The amount of the fee shall be based upon the fee schedule in effect at the time of payment of the fee as determined by the city.

4. Amount of In-Lieu Housing Fee. The amount of the in-lieu housing fees shall be determined by a resolution of the city council. The amount of the in-lieu housing fees shall be sufficient to provide the same number, type, and bedroom distribution of inclusionary units at the same affordability levels that would otherwise be required by this section. The in-lieu housing fee also shall include an administrative fee sufficient to cover the costs of administering the in-lieu housing fee.

5. In-Lieu Housing Fee Account. The principal and interest of all in-lieu housing fees collected shall be deposited into a separate interest-bearing

account (which should not include an administrative fee) administered by the finance director, or designee(s), to be designated the affordable housing trust fund.

6. Use and Expenditure of Fees. The in-lieu housing fees collected, and all earnings from investment of the fees, shall be expended exclusively for the provision of affordable housing through acquisition, construction, rehabilitation, homeowner and renter assistance, equity sharing programs, or other methods to provide housing affordable to the same or lower income category for which the fees were assessed, as well as administrative costs to implement the inclusionary housing program. Expenditure of in-lieu housing fees for administrative costs shall not exceed 20 percent of the in-lieu housing fees collected.

7. In-Lieu Housing Fees Implementing Guidelines. The city, or its designee (s), shall develop guidelines for the administration of the in-lieu housing fees.

8. Annual Review of In-Lieu Housing Fees. Every fiscal year, the finance director, or designee(s), shall prepare a report for the city council on the collection and disbursement of in-lieu housing fees. The city council shall make findings with respect to any portion of the in-lieu housing fees remaining unexpended or uncommitted in the affordable housing trust fund five or more years after deposit of the fees to identify the purpose to which the fees are to be put and to demonstrate a reasonable relationship between the fees and the purpose for which they were charged.

9. Refunds of In-Lieu Administrative Fees. The city shall refund to the then current record owner or owners of the development project or projects on a prorated basis the unexpended portion of the administrative fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subsection (K)(4) of this section. If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this section exceed the amount to be refunded, the city council, after a public hearing, notice of which has been published pursuant to Section 6061 of the California Government Code and posted in three prominent places within the area of the development project, may determine that the fees shall be allocated for some other purpose for which fees are collected subject to AB 1600 and which serves the project on which the fee was originally imposed.

L. Availability of Government Subsidies. It is the intent of this section that the requirements for inclusionary units affordable by very-low- or low-income households shall not be contingent on the availability of government subsidies. This is not to preclude the use of such programs or subsidies. To the extent a government subsidy or affordable housing program has requirements that

conflict with this section, the community development director may modify or waive such conflicting requirement(s) of this section in order to facilitate the development of inclusionary units. This section is also not intended to be an undue burden on the developers of residential projects. Therefore, as detailed in succeeding subsections of this section, incentives are given to provide inclusionary units.

M. Density Bonus. To avoid an undue economic burden or cost to the developer providing inclusionary units or alternatives required by the provisions of this section, the city shall favorably consider the applicability of a density bonus for a proposed residential project or land subdivision, as provided by state and local law; provided, that a density bonus does not conflict with the goals of the city's general plan or result in significant environmental impacts. Granting of a density bonus shall be considered on a project-by-project basis.

N. Fee Waiver or Reduction for Inclusionary Units. The city may waive or reduce city fees applicable to the inclusionary units of a proposed residential development or subdivision.

O. Modification of Development Standards. For residential development projects or land subdivisions which meet the inclusionary requirements of the section, the city may provide additional incentives consistent with its general plan, housing element, and municipal code, including, but not limited to, waiver or modification of covered parking requirements and certain zoning ordinance development standards and expedited design review.

P. Technical Assistance. In order to increase the feasibility and lower the cost of units affordable to very-low- or low-income households, the Benicia planning department and the Benicia housing authority shall provide assistance on financial subsidy programs to project developers.

Q. Reduction of Amenities and Square Footage. Upon a showing by the developer that it is necessary to achieve the required affordability of the inclusionary units:

1. With community development director approval, the developer may reduce the interior amenity level of the inclusionary units below that of the market rate units provided such dwelling units conform to the requirements of applicable building and housing codes; and

2. With city approval, the developer may reduce the square footage of the inclusionary units below that of the market rate units provided all dwelling units conform to the requirement of applicable building and housing codes.

R. Enforcement.

1. The provisions of this section shall apply to all agents, successors and assignees of a developer once only for development of the site. No discretionary permit or building permit shall be issued after the effective date of the ordinance codified in this section for any project which does not meet the intent of the requirements of this section.

2. In addition to, or in lieu of, the provisions of subsection (R)(1) of this section, the city council shall institute appropriate legal actions or proceedings including, but not limited to, equitable relief for the enforcement of this section. Nothing in this section shall be construed to restrict the rights of the third party beneficiaries of this section to enforce its provisions.

3. Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than $500.00, or by imprisonment in the county jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this section is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as provided herein.

S. Appeals. Decisions under this section shall be final on the tenth business day following the decision unless appealed or reviewed in accordance with Chapter 1.44 BMC.

T. Performance. Failure of any city official or agency to fulfill the requirements of this section shall not excuse any developer from the requirements of this section. (Ord. 11-03 §§ 1 – 3; Ord. 10-03 §§ 1, 2, 3; Ord. 07-60 § 2; Ord. 00-9).

17.70.330 Electric transmission line easements.
All residential uses, schools, and public buildings shall be set back at least 150 feet from the edge of 230 kilovolt electric transmission line easements. (Ord. 01-6 N.S., 2001).

17.70.340 Stream setbacks.
All development shall be set back a minimum of 25 feet from the top of the bank of streams (both seasonal and perennial) and ravines. No development shall be permitted within the setback. (Ord. 01-6 N.S., 2001).

17.70.350 Formula businesses.
In the combined Downtown Mixed Use Master Plan and Solano/Davies Square areas (bounded by Military, N and West and East Second Streets), no more than

one establishment of any particular formula business shall be allowed. Approval of a use permit for a formula business requires that the planning commission find that the proposed establishment will:

A. Complement existing uses and enhance the economic health of the surrounding area;

B. Be operated in a nonobtrusive manner that preserves the city's or area's distinctive character, ambiance, and small-sized city and historic nature;

C. Not result in a concentration of formula businesses in the vicinity or citywide;

D. Promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;

E. Contribute to an appropriate balance of local, regional or national-based businesses and small, medium and large-sized businesses in the community; and

F. Avoid an appearance commonly associated with strip retail or shopping centers. (Ord. 12-06 § 1; Ord. 07-12 § 4).

17.70.360 Retail sales larger than 20,000 square feet of gross floor area. Approval of a use permit for a retail sales establishment larger than 20,000 square feet requires that the planning commission find that the proposed establishment will:

A. Complement existing uses and enhance the economic health of the surrounding area;

B. Be operated in a nonobtrusive manner that preserves the city's or area's distinctive character and ambiance;

C. Not result in a concentration of formula and/or retail sales establishments larger than 20,000 square feet in the vicinity or citywide;

D. Promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;

E. Contribute to an appropriate balance of local, regional or national-based businesses and small-sized, medium-sized and large-sized businesses in the community; and

F. Avoid an appearance commonly associated with strip retail or shopping centers. (Ord. 07-15 § 2).

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1 Density bonus shall be a density increase over the maximum residential density otherwise allowed by the base zoning district.

2 Very-low-income households are those households earning 50 percent or less than the area median income, consistent with Section 50105 of the Health and Safety Code. Very-low-income households shall include extremely low-income households.

3 Low-income households are those households earning 80 percent or less than the area median income, consistent with Section 50079.5 of the Health and Safety Code. Low-income households shall include very-low- and extremely low-income households.

4 Moderate-income households are those households earning between 81 percent and 120 percent of the area median income, as defined by Section 50093 of the Health and Safety Code.

5 Senior housing projects are housing developments of 35 or more housing units in which the occupants are 55 years of age or older, consistent with Section 6915 of the Government Code.

6 Planned unit development is a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features: (1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area. (2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1 of the Civil Code. In the city of Benicia, a planned unit development shall be zoned accordingly.

7 Rent shall mean the total of monthly payments for a rental or cooperative unit for use and occupancy of the unit, land, and associated facilities, consistent with Section 6918 of the Government Code. Rent shall also include any fees or service charges that the lessor separately charges all tenants, excluding security deposits. Rent shall also include a reasonable allowance for utilities (as defined by this section) that are otherwise not included in the rent.

- Utilities shall include garbage collection, sewer, water, electricity, gas, and other heating, cooking or refrigeration fuels. Utilities shall not include telephone.

8

Area median income means the median family income of the Vallejo-Fairfield -Napa, CA PMSA (primary metropolitan statistical area). The city of Benicia lies within this statistical area.

9

Housing cost for a purchaser shall include principal and interest on a mortgage loan, including any rehabilitation loans and any associated loan insurance fees, property taxes and assessments, and fire and casualty insurance covering replacement value for the property's improvements. Housing cost for a purchaser shall also include a reasonable allowance for utilities (as defined by this section), homeowners' association fees, property maintenance and repairs, and space rent if the housing is located on rented land.

10

Development concessions shall include, but not be limited to, a reduction in development, architectural or zoning standards (e.g., reduced setbacks or parking standards), approval of mixed-use zoning in conjunction with the housing project, or other regulatory incentives or concessions proposed by the city or developer.