

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	X
CM	X
CA	—

DATE: OCTOBER 11, 2006

TO: CITY MANAGER/CITY COUNCIL

FROM: KYLE BUTTERWICK, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: SECOND READING OF ORDINANCE APPROVING DENSITY BONUS PROGRAM

RECOMMENDED ACTION:

That the City Council conduct a second reading and adopt the Ordinance of the City of Dana Point entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING THE MUNICIPAL CODE TO ESTABLISH A DENSITY BONUS PROGRAM.

DISCUSSION:

At the regular City Council meeting of September 27, 2006, the City Council introduced and conducted a first reading of the Ordinance amending the Municipal Code to include the state-mandated Density Bonus Program. At the same meeting, the City Council approved in concept the draft of the Housing Element, allowing it to be forwarded to California Housing and Community Development for certification. Also at the same meeting, a proposed Inclusionary Housing Program, with related in-lieu fees, was denied by the City Council.

The Planning Commission reviewed the Density Bonus Program and made revisions prior to their recommendation to the City Council at its regular Planning Commission meeting held on September 6, 2006. The Planning Commission amended the Ordinance to specify that Density Bonus concessions would not allow for height increases citywide. The amendment was incorporated into the Ordinance now considered for second reading.

ENVIRONMENTAL ANALYSIS:

In accordance with CEQA, a Negative Declaration was prepared for the Density Bonus Program Ordinance.

NOTIFICATION/FOLLOW-UP:

Notice for the proposed Ordinance was published in the newspaper in accordance with the noticing requirements. In addition, all affected agencies and interested parties were provided notice of the hearing date. The Ordinance will be published as required by law. The Council's action is final unless modified through legal action.

FISCAL IMPACT:

There will be no fiscal impacts resulting in recommended actions.

ACTION DOCUMENTS:

Page No.

- A. [Ordinance #06-xx Density Bonus Housing Program](#)..... 3

SUPPORTING DOCUMENTS:

None.

ACTION DOCUMENT A**ORDINANCE NO. 06-xx****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, AMENDING THE MUNICIPAL CODE TO ESTABLISH A
DENSITY BONUS PROGRAM**

Applicant: Community Development Department
File No.: FF# 0610-15

The City Council for the City of Dana Point does hereby ordain as follows:

WHEREAS, the City desires to update the regulations which affect housing in its jurisdiction; and

WHEREAS, the Planning Commission and City Council conducted Housing Summits on May 10, and June 28, 2006 to review the draft Housing Element and housing programs; and

WHEREAS, the Planning Commission did, on the 6th of September, 2006, hold a duly noticed public hearing as prescribed by law and recommended the City Council approve the Density Bonus program; and

WHEREAS, the City Council did, on the 27th of September, 2006, hold a duly noticed public hearing as prescribed by law to consider the Density Bonus program; and

WHEREAS, at said public hearings, upon hearing and considering all testimony, if any, of all persons desiring to be heard, said Commission and Council considered all factors related to the establishment of a Density Bonus program; and

WHEREAS, the City's proposed amendments are identified as Exhibit A, attached hereto and made a part of this Ordinance; and

WHEREAS, the Density Bonus Program is intended to comply with state law and provide direction related to affordable housing development.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A) That the above recitations are true and correct.
- B) That based on the evidence presented at the public hearing, the City Council adopts the following findings:

Findings:

- 1) California Senate Bill 1818 changed the state law to require cities to allow density bonuses in conjunction with development of affordable housing.
- 2) The proposed amendment complies with all other applicable requirements of state law and local ordinances.
- 3) The proposed amendment is consistent with the Dana Point Strategic Plan initiative to update the Housing Element and to strengthen housing programs.
- 4) The proposed Municipal Code amendment is consistent with the Dana Point General Plan because it implements the General Plan Program Category 2 of the Housing Element to Assist in the Development of Adequate Housing to Meet the Needs of Low/Moderate Income Households, which includes Policy 2.4 to encourage inclusion of affordable units where feasible in new residential construction.
- 5) That the public and affected agencies have had ample opportunity to participate in the approval process. Notices for the proposed action included advertisements in the Dana Point News prior to the Planning Commission Public Hearing held on September 6, 2006 and the City Council Public Hearing held on September 27, 2006. Notices of the hearing were mailed to affected agencies. Notices were also posted at Dana Point City Hall, Dana Point Post Office, the Capistrano Beach Post Office and the Dana Point Library.
- 6) That the importance of views and adherence to established height limits are of constant concern to residents citywide which precludes any consideration of height increases to achieve density bonuses associated with this amendment.

I, Kathy M. Ward, Acting City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 06-XX, introduced at a regular meeting of the City Council held on the 27th day of September, 2006, and passed and adopted at a regular meeting held the _____ day of _____, 2006, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathy M. Ward
Acting City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY M. WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified Acting City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 06-XX being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING THE MUNICIPAL CODE TO ESTABLISH A DENSITY BONUS PROGRAM

was published in summary in the Dana Point News on the _____ day of _____, 2006, and the _____ day of _____, 2006, and, in further compliance with City Resolution No. 91-10-08-1, on the _____ day of _____, 2006, and the _____ day of _____, 2006, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office.
- Dana Point Community Center

KATHY M. WARD
ACTING CITY CLERK
Dana Point, California

EXHIBIT A

Density Bonuses

DENSITY BONUSES**Sections:**

4.40.010	Purpose and Application
4.40.012	Definitions
4.40.014	Qualifications for Density Bonus and Incentives and Concessions
4.40.016	Continued Affordability
4.40.018	Incentives and Concessions
4.40.020	Waiver/Modification of Development Standards
4.40.022	Specified Density Bonus Percentages
4.40.024	Land Donation
4.40.026	Child Care Facilities
4.40.028	By-Right Parking Incentives
4.40.030	Application and Review Procedures

4.40.010 Purpose and Application.

The purpose of this Chapter is to establish procedures for implementing State density bonus requirements, as set forth in California Government Code Section 65915, as amended, and to increase the production of affordable housing, consistent with the city's goals, objectives, and policies. When an applicant seeks a density bonus for a housing development, or for the donation of land for housing, within the city's jurisdiction, the city shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this Chapter.

4.40.012 Definitions.

The following definitions shall apply to this Chapter:

“Affordable housing cost” bears the same meaning as defined in Section 50052.5 of the California Health and Safety Code.

“Affordable housing unit” means a dwelling unit within a housing development which will be rented or sold to and reserved for very low income households, lower income households, moderate income households and/or senior citizens at an affordable housing cost for the respective group(s) in accordance with Section 65915 of the California Government Code and this Chapter.

“Affordable rent” means that level of rent defined in Section 50053 of the California Health and Safety Code.

“Applicant” means a developer or applicant for a density bonus pursuant to Section 65915, subdivision (b), of the California Government Code and Section 4.40.014 of this Chapter.

“Child care facility” means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

“Common interest development” bears the same meaning as defined in Section 1351 of the California Civil Code.

“Density bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city.

“Development standard” means site or construction conditions that apply to a housing development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

"Housing development," means one or more groups of projects for residential units in the planned development of the city. "Housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the California Civil Code, approved by the city and consisting of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units.

“Lower income households” bears the same meaning as defined in Section 50079.5 of the California Health and Safety Code.

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

“Moderate Income” or “persons and families of moderate income” means those middle-income families as defined in Section 50093 of the California Health and Safety Code.

“Qualified mobilehome park” means a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the California Civil Code.

“Senior citizen housing development” means senior citizen housing as defined in Sections 51.3 and 51.12 of the California Civil Code.

“Specific adverse impact” means any adverse impact as defined in paragraph (2), subdivision (d), of California Government Code Section 65589.5, upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development unaffordable to low- and moderate-income households.

“Very low income households” bears the same meaning as defined in Section 50105 of the Health and Safety Code.

4.40.014 Qualifications for Density Bonus and Incentives and Concessions

A. The city shall grant one density bonus as specified in Section 4.40.022 , and incentives or concessions as described in Section 4.40.018, when an applicant seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this Chapter, that will contain at least any one of the following:

1. Ten percent (10%) of the total units of the housing development as affordable housing units affordable to lower income households; or
2. Five percent (5%) of the total units of the housing development as affordable housing units affordable to very low income households; or
3. A senior citizen housing development; or
4. A qualified mobilehome park; or
5. Ten percent (10%) of the total units of a common interest development as affordable housing units affordable to moderate income households, provided that all units in the development are offered to the public for purchase subject to the restrictions specified in this Chapter.

B. As used in paragraph A of this Section 4.40.014, the term "total units" does not include units permitted by a density bonus awarded pursuant to this section or any other local law granting a greater density bonus.

C. Each applicant who requests a density bonus pursuant to this Chapter, shall elect whether the bonus shall be awarded on the basis of subparagraph 1, 2, 3, 4 or 5 of this Section 4.40.014, paragraph A. Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low affordable housing units, lower income affordable housing units or moderate income affordable housing units, or the development's status as a senior citizen housing development or qualified mobilehome park. Density bonuses from more than one category may not be combined.

4.40.016 Continued Affordability

A. An applicant shall agree to, and the city shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for a period of 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for affordable housing units for lower income households shall be set at an affordable rent. Owner-occupied affordable housing units shall be available at an affordable housing cost.

B. An applicant shall agree to, and the city shall ensure, that the initial occupant of moderate-income units that are directly related to the receipt of the density bonus in a common

interest development, are persons and families of moderate income and that the units are offered at an affordable housing cost. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following shall apply to the equity-sharing agreement:

1. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The city shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes that promote homeownership as described in subdivision (e) of Section 33334.2 of the California Health and Safety Code.
2. For purposes of this subdivision, the city's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
3. For purposes of this subdivision, the city's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

4.40.018 Incentives and Concessions

A. An applicant for a density bonus may also submit to the city a proposal for specific incentives or concessions in exchange for the provision of affordable housing units in accordance with this Chapter. The applicant may also request a meeting with the city to discuss such proposal. The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of either of the following:

1. The concession or incentive is not required in order to provide for affordable housing costs; or
2. The concession or incentive would have a specific adverse impact.

B. If the conditions of Section 4.40.014 and paragraph A of this Section 4.40.018 are met by an applicant, the city may grant the applicant the following number of incentives or concessions:

1. One incentive or concession for housing developments that include: At least ten percent (10%) of the total units affordable to lower income households; or at least five percent (5%) of the total units affordable to very low income households; or at least ten percent (10%) of the total units affordable to persons and families of moderate income in a common interest development.
2. Two incentives or concessions for housing developments that include: At least twenty percent (20%) of the total units affordable to lower income households; or at least ten percent (10%) of the total units affordable to very low income

households; or at least twenty percent (20%) of the total units affordable to persons and families of moderate income in a common interest development.

3. Three incentives or concessions for housing developments that include: At least thirty percent (30%) of the total units for lower income households; or at least fifteen percent (15%) for very low income households; or at least thirty percent (30%) for persons and families of moderate income in a common interest development.

C. For the purposes of this Chapter, available concessions or incentives may include any of the following:

1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
2. Approval of mixed use zoning in conjunction with the housing development if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing development will be located.
3. Other regulatory incentives or concessions proposed by the applicant or the city that result in identifiable, financially sufficient, and actual cost reductions.

D. This Section 4.40.018 does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly-owned land, by the city or the waiver of fees or dedication requirements. Nor does any provision of this section require the city to grant an incentive or concession found to have a specific adverse impact.

E. The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

F. The application and review process for a proposal of incentives and concessions is set forth in Section 4.40.030.

G. The importance of views and adherence to height limits to residents citywide precludes any consideration of height increases associated with this code.

4.40.020 Waiver/Modification of Development Standards

A. Applicants may, by application, seek a waiver, modification or reduction of development standards that will otherwise preclude or inhibit the use of density bonus units in a housing development at the densities or with the concessions or incentives permitted by this Chapter. The applicant may also request a meeting with the city to discuss such request for waiver/modification. In order to obtain a waiver/modification of development standards, the applicant shall show that (i) the waiver or modification is necessary to make the housing units economically feasible, and (ii) that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of Section 4.40.014, paragraph A, at the densities or with the concessions or incentives permitted by this Chapter.

B. Nothing in this Section 4.40.020 shall be interpreted to require the city to waive, modify or reduce development standards if the waiver, modification or reduction would have a specific adverse impact.

C. The application and review process for a waiver/modification of development standards is set forth in Section 4.40.030.

4.40.022 Specified Density Bonus Percentages

A. Only housing developments consisting of five (5) or more dwelling units are eligible for the density bonus percentages provided by this Section 4.40.022. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in Section 4.40.014, paragraph A.

B. For housing developments meeting the criteria of subparagraph (1) of paragraph (A) of Section 4.40.014, the density bonus shall be calculated as follows:

<i>Percentage Low-Income Units</i>	<i>Percentage Density Bonus</i>
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32

19	33.5
20	35

C. For housing developments meeting the criteria of subparagraph (2) of paragraph (A) of Section 4.40.014, the density bonus shall be calculated as follows:

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

C. For housing developments meeting the criteria of subparagraphs (3) and (4) of paragraph (A) of Section 4.40.014, the density bonus shall be twenty percent (20%).

D. For housing developments meeting the criteria of subparagraph (5) of paragraph (A) of Section 4.40.014, the density bonus shall be calculated as follows:

<i>Percentage Moderate Income Units</i>	<i>Percentage Density Bonus</i>
10	5
11	6
12	7
13	8
14	9
15	10

16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33

39	34
40	35

E. An applicant may elect to accept a lesser percentage of density bonus than that to which the applicant is entitled under this Chapter. All density bonus calculations resulting in a fractional number shall be rounded upwards to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

F. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

G. The application and review process for a density bonus as provided by this section is set forth in Section 4.40.010.

4.40.024 Land Donation

A. When a developer of a housing development donates land to the city as provided for in this Section 4.40.024, the applicant shall be entitled to a fifteen percent (15%) increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire housing development, as follows:

<i>Percentage Very Low Income Units</i>	<i>Percentage Density Bonus</i>
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23

19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

This increase shall be in addition to any increase in density mandated by Section 4.40.014, up to a maximum combined mandated density increase of thirty-five percent (35%), if an applicant seeks both the increase required pursuant to this section and Section 4.40.014. All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the city's authority to require an applicant to donate land as a condition of development.

B. An applicant shall be eligible for the increased density bonus described in this section if the city is able to make all the following findings:

1. The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
2. The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent (10%) of the number of residential units of the proposed development.
3. The transferred land is at least one acre in size or of sufficient size to permit development of at least forty (40) units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall

have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or development application for the housing development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of very low income housing units on the transferred land, except that the city may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

4. The transferred land and the very low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units consistent with this Chapter, which restriction will be recorded on the property at the time of dedication.
 5. The land is transferred to the city or to a housing developer approved by the city. The city may require the applicant to identify and transfer the land to such city-approved developer.
 6. The transferred land shall be within the boundary of the proposed development or, if the city agrees in writing, within one-quarter mile of the boundary of the proposed development.
- C. The application and review process for a donation of land and related density bonus is set forth in Section 4.40.010.

4.40.026 Child Care Facilities

A. When an applicant proposes to construct a housing development that includes affordable units as specified in Section 4.40.014 and includes a child care facility that will be located on the premises of, as part of, or adjacent to such housing development, the city shall grant either of the following if requested by the developer.

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

B. A housing development shall be eligible for the density bonus or concession described in this section if the city, as a condition of approving the housing development, requires all of the following to occur:

1. The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the affordable housing units are required to remain affordable pursuant to Section 4.40.016.

2. Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of affordable housing units that are proposed to be affordable to very low income households, lower income households, or moderate income households.
 3. Notwithstanding any requirement of this Section 4.40.026, the city shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.
- C. The application and review process for the provision of child care facilities and related density bonus or concessions or incentives is set forth in Section 4.40.010.

4.40.028 By-Right Parking Incentives

A. Housing developments meeting any of the criteria of Section 4.40.014, paragraph A, shall be granted the following maximum parking ratios, inclusive of handicapped and guest parking, which shall apply to the entire development, not just the restricted affordable units, when requested by a developer:

1. Zero to one bedroom dwelling unit: one onsite parking space;
2. Two to three bedrooms dwelling unit: two onsite parking spaces;
3. Four or more bedrooms: two and one-half parking spaces.

B. If the total number of spaces required results in a fractional number, it shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

4.40.030 Application and Review Procedures

A. A written application for a density bonus, incentive, concession, waiver, or modification pursuant to this Chapter shall be submitted with the first application for approval of a housing development and processed concurrently with all other applications required for the housing development. The application shall be submitted on a form prescribed by the city and shall include at least the following information:

1. Site plan showing total number of units, number and location of affordable housing units, and number and location of proposed density bonus units.
2. Level of affordability of affordable housing units and proposals for ensuring affordability.
3. Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards. The application shall

include evidence that the requested incentives and concessions are required for the provision of affordable housing costs and/or affordable rents, as well as evidence relating to any other factual findings required under Section 4.40.018.

4. If a density bonus or concession is requested in connection with a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 4.40.024 can be made.
5. If a density bonus or concession/incentive is requested for a childcare facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in Section 4.40.026 can be made.

B. An application for a density bonus, incentive or concession pursuant to this Chapter shall be considered by and acted upon by the approval body with authority to approve the housing development and subject to the same administrative appeal procedure, if any. In accordance with state law, neither the granting of a concession, incentive, waiver, or modification nor the granting of a density bonus shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

D. For housing developments requesting a waiver, modification or reduction of a development standard, an application pursuant to this subdivision shall be heard by the city planning commission. A public hearing shall be held by the planning commission and the commission shall issue a determination. Pursuant to Government Code Section 65915, the planning commission shall approve the requested waiver/modification or reduction of development standards, unless one of the following conditions applies:

1. The waiver/modification is not required to make the proposed affordable housing units feasible; or
2. The waiver/modification will have a specific adverse impact.

The decision of the city planning commission may be appealed to the city council within fourteen consecutive calendar days of the date the decision is made in the manner provided in Dana Point Municipal Code.

E. Notice of any city determination pursuant to this section shall be provided to the same extent as required for the underlying development approval.