Chapter 9.60 Special Housing Regulations

9.60.010 Purpose. The purpose of this Chapter is to implement specified provisions of State law pertaining to local regulation of housing development projects, including, but not limited to, the State Density Bonus Law, Government Code Sections 65915, *et. seq*., the Housing Accountability Act, Government Code Section 65589.5, the Housing Crisis Act of 2019, Government Code Section 66300, the No Net Loss Law, Government Code Section 65863, and the Housing Element Law, Government Code Sections 65580 *et. seq.*

9.60.020 Review of Housing Development Projects.

A. Compliance with State Law.

1. Generally. Notwithstanding the provisions of chapter 9.32, all proposed housing development projects shall be reviewed in accordance with requirements and limitations imposed by State law, including, but not limited to, Government Code Sections 65589.5, 65915-65918, 65583, 65584, 65863, 65905.5, 65913-65913.11, 65940-65945.3, 66300, 65650-65656, and 65660-65688. Except to the extent otherwise provided by State law, such review shall ensure that proposed housing development projects comply with all applicable, objective standards, provisions, conditions and requirements of the general plan, this chapter, and other applicable ordinances and policies of the City.

2. Findings Required for Disapproval of Housing Development Projects. As provided by State law, when a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, a City hearing body or official shall not disapprove the project or impose a condition that the project be developed at a lower density unless the hearing body or official makes written findings, based on a preponderance of the evidence on the record, that (a) the project would have a specific, adverse impact on public health and safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density, and (b) there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. As set forth in subdivision (j)(1) of Government Code Section 65589.5, as used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application for the housing development project was deemed complete.

3. Additional Findings Required for Disapproval of Housing Development Projects for Very Low, Low-, or Moderate-Income Households. As provided by State law, a City hearing body or official shall not disapprove a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including

through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as required by subdivision (d) of Government Code Section 65589.5. For purposes of this paragraph, "housing for very low, low-, or moderate-income households" shall have the meaning set forth in subdivision (h)(3) of Government Code Section 65589.5.

B. Consistency Review of Housing Development Project Applications. The Department Director shall be responsible for reviewing each application for a housing development project for consistency and compliance with applicable, objective general plan, zoning, and subdivision standards and criteria within the time period(s) prescribed by law. In accordance with subdivision (j)(2)(A) of Government Code Section 65589.5, if the Department Director considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision, the Department Director shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons the Department Director considers the housing development to be inconsistent, not in compliance, or not in conformity. For proposed housing development projects containing 150 or fewer housing units, the Department Director shall provide said written documentation and explanation within 30 days of the date that the project application is determined to be complete. For proposed housing development projects containing more than 150 housing units, the Department Director shall provide said written documentation and explanation within 60 days of the date that the project application is determined to be complete. In accordance with subdivision (j)(2)(B) of Government Code Section 65589.5, a City hearing body or official may not disapprove a proposed housing development project on the basis that the proposed project is inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision not identified in the written documentation and explanation provided by the Department Director.

C. Discretionary Review of Housing Development Projects. Notwithstanding section 9.32.030 or any other provision of this title, the following provisions shall apply to the consideration of applications for site plans, conditional use permits, or other quasi-judicial land use permits required for the construction or operation of a housing development project, as defined in subdivision (h)(2) of Government Code Section 65589.5, which is not subject to ministerial review by the Department Director pursuant to subsection 9.60.020.D:

1. Public Notice and Hearings.

a. Except as modified by this section, land use permits for housing development projects shall be subject to the notice, hearing, and appeal procedures set forth in chapter 9.32.

b. For so long as Government Code Section 95905.5 so provides and remains in effect, no more than five hearings or continued hearings shall be conducted in connection with consideration of an application for a housing development project, unless otherwise agreed to by the applicant or the applicant's designated representative. Said limit does not apply to any hearing to review a legislative approval required for a housing development project. The opening of a public

hearing solely for the purpose of continuing the hearing to a future date shall not count as one of the five allowed hearings, provided no substantial discussion by the hearing body occurs and no testimony is taken. The final review authority shall consider and either approve, conditionally approve, or disapprove the application at one of the five hearings allowed pursuant to Government Code section 95905.5; provided, however, that, unless otherwise provided by law, the application shall not automatically be deemed approved if the final review authority does not act on the application at one of the five allowed hearings.

2. Findings Required for Disapproval of Housing Development Projects. The findings set forth in subdivision D of section 9.32.030 of this title shall not be required to be made in order to approve an application for a land use permit for a housing development project. Rather, the hearing body shall approve an application for a land use permit for a housing development project unless it makes one or more of the following findings based on the information presented at public hearing and/or on the record:

a. That the proposed development project is inconsistent, not in compliance, or not in conformity with one or more applicable, objective standards, provisions, conditions or requirements of the general plan, Title 9, or other applicable ordinances or policies of the City.

b. That the provisions of the California Environmental Quality Act have not been complied with.

c. That, based on a preponderance of the evidence on the record, the proposed development project would have a specific, adverse impact, as defined in subdivision (j)(1)(A) of Government Code Section 65589.5, on public health and safety unless the project is disapproved, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval of the proposed project.

In addition, notwithstanding the foregoing, provided the provisions of the California Environmental Quality Act have been complied with, the hearing body may not disapprove an application for a land use permit for a housing development project for very low, low-, or moderate-income households, as defined in subdivision (h)(3) of Government Code Section 65589.5, or an emergency shelter, unless it also makes the written findings required by subdivision (d) of Government Code Section 65589.5.

3. No Net Loss Findings. If the approval of a land use permit for a housing development project will result in fewer residential units by income category than projected for the site in the general plan housing element, the "no net loss" provisions of Government Code Section 65863 and Section 9.60.030 of this Code apply and the hearing body must also make the required findings. If the hearing body is unable to find that the remaining sites in the housing element are adequate to accommodate the City's share of the regional housing need by income level, and the City is required to identify and make available

adequate additional sites pursuant to subdivision (c)(2) of Government Code Section 65863, the final review authority for the land use permit shall be the City Council.

4. Conditions of Approval. The hearing body may impose reasonable conditions of approval that are necessary to ensure that the proposal complies with all local, state and federal laws, and that impacts resulting from the development are adequately mitigated, subject to the following limitations imposed by State law:

a. The hearing body shall not impose a condition on approval of a land use permit for a housing development project that the project be developed at a lower density unless the hearing body makes written findings, based on a preponderance of the evidence on the record, that the proposed development project would have a specific, adverse impact, as defined in subdivision (j)(1)(A) of Government Code Section 65589.5, on public health and safety unless the project is disapproved or developed at a lower density, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval of the proposed project or the approval of the project upon the condition that it be developed at a lower density.

b. The hearing body shall not condition approval of a land use permit for a housing development project for very low, low-, or moderate-income households, as defined in subdivision (h)(3) of Government Code Section 65589.5, or an emergency shelter, in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as required by subdivision (d) of Government Code Section 65589.5.

D. Ministerial Review of Housing Development Projects. The following provisions apply in the event that State law or any provision of this Code requires a housing development project to be reviewed ministerially and/or designates a housing development project a "use by right" as defined in Government Code Section 65583.2:

1. The Department Director may prepare application forms and provide blanks for such purposes and may prescribe the type of information to be provided in the application by the applicant. No application shall be accepted unless it is completed as prescribed. All such applications shall require fees to be paid in accordance with a resolution adopted by the City Council.

2. The Department Director is authorized to review and approve or deny the proposed housing development project in accordance with applicable law. Decisions of the Department Director may be appealed to the City Manager, who's decision shall be final.

3. If the ministerial approval of a housing development project will result in fewer residential units by income category than projected for the site in the general plan housing

element, the "no net loss" provisions of Government Code Section 65863 and Section 9.60.030 of this Code apply and the Department Director must also make the required findings.

4. Except to the extent otherwise provided by State law, the Department Director shall not approve a proposed housing development project unless it complies with all applicable, objective standards, provisions, conditions and requirements of the general plan, title 9 of this Code, and other applicable ordinances and policies of the City.

E. Standard Conditions for Housing Development Projects. The Department Director is authorized to promulgate, modify, and enforce standard conditions and requirements that apply to approved housing development projects, which implement applicable, objective State, City, and other local agency standards, provisions, and conditions, provided such standard conditions and requirements are consistent with the provisions of this Code and State law.

F. City Sponsored Housing Development Projects. Except as otherwise determined by the City Manager or designee, housing development projects which are owned or financially assisted by the City of Garden Grove or the Garden Grove Housing Authority, including, without limitation, emergency shelters, low-barrier navigation centers, transitional or supportive housing developments, and the conversion of existing hotels or motels to affordable housing or permanent supportive housing, shall be exempt from the development standards and procedures set forth in or promulgated pursuant to title 9 of this Code.

9.60.030 No Net Loss

A. Purpose. The purpose of this section is to implement the "no net loss" provisions of the Housing Crisis Act, Government Code Section 66300, and the No Net Loss Law, Government Code Section 65863.

B. No Net Loss Provisions Applicable to All Parcels Where Housing is an Allowable Use. In accordance with Government Code Section 66300 (Housing Crisis Act), notwithstanding any other provision of this Code, for so long as Government Code Section 66300 remains effective, where housing is an allowable use, the City shall not approve any land use application to change the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use. Notwithstanding the foregoing, the City may, but shall not be required to, change the land use designation or zoning of a parcel to a less intensive use if the City, in its sole and absolute discretion, concurrently changes the development standards, policies, and conditions applicable to other parcels within the city to ensure that there is no net loss in residential capacity city-wide. For purposes of this paragraph, "concurrently" has the same meaning as defined in subdivision (i) of Government Code Section 66300.

C. No Net Loss Law Provisions Applicable to Housing Element Parcels. In accordance with Government Code Section 65863 (No Net Loss Law), the following provisions shall apply with respect to any parcel of land identified in the City's general plan housing element site inventory described in subdivision (a)(3) of, or a housing element program to make sites available pursuant to subdivision (c)(1) of, Government Code Section 65583 for residential development to meet the

City's share of regional housing need allocated pursuant to Government Code Section 65584 (a "housing element parcel"):

1. Reductions of Allowable Residential Density. Prior to or concurrent with approving a general plan amendment, specific plan amendment, zoning ordinance, planned unit development, or any other administrative, quasi-judicial, legislative, or other action to reduce, or require or permit the reduction of, the allowable residential density for any housing element parcel, the City body or official taking such action shall make written findings supported by substantial evidence of both of the following:

    a. The reduction of residential density is consistent with the adopted general plan, including the housing element.

    b. The remaining sites identified in the housing element are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need pursuant to Government Code Section 65584. This finding shall include a quantification of the remaining unmet need for the City's share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.

Notwithstanding the foregoing, if a reduction in allowable residential density for any housing element parcel would result in the remaining sites in the housing element not being adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need pursuant to Government Code Section 65584, the City, in its sole and absolute discretion, may approve a reduction in allowable residential density on that parcel if the housing element is amended to identify sufficient additional, adequate, and available sites with an equal or greater allowable residential density so that there is no net loss of residential unit capacity city-wide.

2. Approval of Development of a Parcel at a Lower Residential Density.

    a. Prior to or concurrent with approving an application to develop a housing element parcel with fewer units by income category than identified in the housing element for that parcel, or taking any administrative, quasi-judicial, legislative, or other action to otherwise allow development of a housing element parcel at a lower residential density, as defined in subdivision (g) of Government Code Section 65863, the City body or official taking such action shall make a written finding supported by substantial evidence as to whether the remaining sites identified in the housing element are adequate to meet the requirements of Government Code Section 65583.2 and to accommodate the City's share of the regional housing need pursuant to Government Code Section 65584. This finding shall include a quantification of the remaining unmet need for the City's share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.

b. If the City review authority approves a development project on a housing element parcel results in fewer units by income category than identified in the housing element for that parcel and does not find that the remaining sites identified in the housing element are adequate to accommodate the City's share of the regional housing need by income level, the City shall within 180 days identify and make available additional adequate sites to accommodate the City's share of the regional housing need by income level in accordance with subdivision (c)(2) of Government Code Section 65863.

c. This subdivision shall not be interpreted to require the City to approve an application for any permit or legislative action associated with a proposed development project. However, pursuant to subdivision (c)(2) of Government Code Section 65863, the review authority for a permit for a proposed housing development project may not disapprove that permit on the basis that its approval would require the City to identify and make available additional adequate sites to accommodate the City's share of the regional housing need.

3. Applicant Responsibility. If an applicant for a development project or land use permit requests in his/her/its initial application, as submitted, a non-residential development or a mixed-use or residential development at a residential density that would result in the remaining sites in the housing element not being adequate to accommodate the City's share of the regional housing need pursuant to Government Code Section 65584, the applicant shall assist the City to comply with the no net loss provisions of Government Code Section 65863 as follows:

a. The applicant shall identify and include with its application a list of additional potential candidate sites to accommodate the shortfall in the City's share of the regional housing need by income level that would result from the proposed development project, along with such evidence as is reasonably requested by the Department Director necessary to show that such candidate sites are adequate sites pursuant to Government Code Section 65583.2 and proof that the owner or owner(s) of each such candidate site consents to rezoning and/or identification of the site in the housing element. To the extent allowed by State law, sufficient additional adequate sites must be identified before the application may be deemed complete.

b. The applicant shall fund and/or provide outreach to property owners and tenants of property within the vicinity of candidate sites as required by the Department Director, including, without limitation, the mailing of written notices and the advertisement and conduct of community meetings to provide information to interested community members about the identification and/or potential rezoning of the candidate sites.

c. To the extent permitted by State law, the applicant shall reimburse the City for the actual fees and costs charged for the services of attorneys and/or other professional third-party consultants engaged by the City to provide consultation,

advice, analysis, and/or review or preparation of documents in connection with the identification of candidate sites and determination of their adequacy pursuant to Government Code Section 65583.2 and/or the preparation and processing of any required general plan and/or zoning amendments. Concurrent with submittal of an application for the proposed development project, the applicant shall execute a reimbursement agreement with the City in a form approved by the City Attorney and provide a deposit to the City in an amount sufficient to cover the estimated total professional fees and costs to be incurred by the City, as determined by the Department Director in his or her reasonable discretion. The City Manager is authorized to execute said reimbursement agreement on behalf of the City.

9.60.040 Residential Density Bonus

A. Application. In addition to any other review required for a proposed housing development project, applications for a density bonus shall be filed with the planning division. The application shall be filed concurrently with an application for the required land use action.

B. Processing. City staff shall process the application for a density bonus in the same manner as, and concurrently with, the application for the land use approval that is required by this Code.

C. Documentation. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.

D. Replacement Housing Requirement. Pursuant to subdivision (c)(3) of Government Code Section 65915, the applicant will be ineligible for a density bonus or other incentives unless the applicant complies with the replacement housing requirements therein, including in the following circumstances:

1. The housing development is proposed on any parcel(s) on which rental dwelling units are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; or

2. The housing development is proposed on any parcel(s) on which rental dwelling units that were subject to a recorded covenant, ordinance, or law that restricted rents to levels affordable to persons and families of lower or very low income have been vacated or demolished in the five-year period preceding the application; or

3. The housing development is proposed on any parcel(s) on which the dwelling units are occupied by lower or very low-income households; or

4. The housing development is proposed on any parcel(s) on which the dwelling units that were occupied by lower or very low-income households have been vacated or demolished in the five-year period preceding the application.

E. Density Bonus Awarded. For a housing development qualifying pursuant to the requirements of Government Code Sections 65915 or 65915.5, the City shall grant a density bonus in an amount specified by Government Code Sections 65915 or 65915.5, as those sections may be amended from time to time. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus.

F. Calculation. For the purpose of calculating the density bonus, the "maximum allowable residential density" shall be the maximum allowable gross residential density established under the applicable development standards for the parcel(s), subject to subdivision (o) of Government code Section 65915.

G. Incentives/Concessions. The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

H. Physical constraints. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;

2. The waiver or reduction of the development standard would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact;

3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or

4. The waiver or reduction of the development standard would be contrary to state or federal law.

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

J. Regulatory Agreement. The property owner(s) shall enter into a regulatory agreement with the City pursuant to Section 9.60.050, which satisfies the criteria set forth in subdivision (c) of Government Code Section 65915.

K. Density Bonus Law.

1. Compliance. The applicant shall comply with all requirements stated in Government Code Sections 65915 through 65918. The requirements of Government Code Section 65915 through 65918, and any amendments thereto, shall prevail over any conflicting provision of this Code.

2. Excluded development. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.

3. Interpretation. The provisions of this subdivision shall be interpreted to implement and be consistent with the requirements of Government Code Sections 65915 through 65918. Any changes to Government Code Sections 65915 through 65918 shall be deemed to supersede and govern over any conflicting provisions contained herein.

9.60.050 Affordable Housing Regulatory Agreements

A. Purpose. The purpose of this Section is to establish minimum requirements and procedures for the preparation, execution, and recording of regulatory agreements establishing covenants to ensure the initial and continued affordability of income-restricted residential dwelling units required to be provided in conjunction with the approval of a housing development project pursuant a provision of this Code or State law.

B. Definitions. As used in this section, the following terms shall have the following meanings:

1. “Affordable Units” means residential dwelling units required to be made affordable to, and occupied by, households with incomes that do not exceed the limits specified in applicable law for middle income, moderate-income, lower income, very low income, or extremely low income households, as applicable, at an affordable rent or affordable housing cost, pursuant to State law or any provision of this Code.

2. “Owner” means the record owner or owners of the parcel or parcels on which a proposed housing development project containing affordable units is located.

3. “Regulatory Agreement” means an agreement entered into between an owner and the City pursuant to this Section.

C. Requirement for Regulatory Agreement. Whenever an applicant for a housing development project offers to or is required as a condition of development pursuant to State law or any provision of this Code to provide a specified number or percentage of affordable units as part of the project, the owner shall enter into a regulatory agreement with the City meeting the requirements of this section in the form approved by the City Attorney.

D. Required Provisions of Regulatory Agreements. Unless otherwise provided by law or authorized by the City Manager, each regulatory agreement shall include provisions addressing or requiring the following:

1. Identification of Affordable Units. The number, affordability level, unit size mix, and location requirements for the affordable units shall be set forth in the regulatory agreement. For mixed income projects, the regulatory agreement shall require that affordable units be integrated with the market rate units so that there is a mix of affordable and market rate units in each building, and shall contain provisions to ensure that the project complies with the requirements set forth in Health and Safety Code Section 17929. The regulatory agreement may allow the affordable units in a rental project to be "floating" units that are not permanently designated, provided that at no time shall a majority of the affordable units be congregated to a specific section of the project.

2. Timing of Construction. The regulatory agreement shall require that the affordable units be constructed concurrently with or prior to other units in the housing development project.

3. Affordability Period for Affordable Units. The regulatory agreement shall require that the affordable units remain affordable to, and be occupied by, persons and families of the required income level at an affordable rent or affordable housing cost, as applicable, for the minimum period of time required by law. Where a minimum affordability period is not otherwise specified by statute or ordinance, the required affordability period shall be a minimum of thirty (30) years.

4. Annual Tenant Income Verification and Certification. For projects containing rental affordable units, the regulatory agreement shall include uniform provisions requiring the owner to annually obtain written certifications from, and to verify that, each tenant household occupying an affordable unit meets the applicable income and eligibility requirements established for the affordable unit.

5. Eligibility of Initial Buyers of For-Sale Affordable Units. For projects containing for-sale affordable units, the regulatory agreement shall include uniform provisions requiring the owner to verify that the initial buyer(s) of each affordable unit be of the applicable income level and shall require the initial buyer(s) of each affordable unit to occupy the affordable unit at all times until resale of the affordable unit.

6. Equity Sharing Provisions. For projects containing for-sale affordable units, the regulatory agreement shall contain provisions establishing an equity sharing arrangement consistent with the provisions set forth in paragraph (2) of subdivision (c) of Government

Code Section 65915. Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The City shall recapture any initial subsidy and its proportionate share of appreciation

7. Annual Compliance Report. Each regulatory agreement shall contain provisions requiring the owner to submit an annual compliance report containing specified information to the City in a form reasonably satisfactory to City Manager and to annually certify that the affordable units are in compliance with the requirements of the regulatory agreement.

8. Maintenance Standards. The regulatory agreement shall contain uniform provisions governing the owner's maintenance obligations and the City's rights in the event the owner fails to adhere to its maintenance obligations.

9. Recordkeeping Requirements. The regulatory agreement shall contain uniform provisions requiring the owner to maintain affordable unit sales documents, tenant leases, income certifications, and other books, documents, and records related to the sale or rental of the affordable units and operation of the project for a period of not less than five (5) years after creation of each such record; to allow the City to inspect any such books, documents, or records and to conduct an independent audit or inspection of such records at a location that is reasonably acceptable to the City Manager upon prior written notice; and to permit the City and its authorized agents and representatives to access the property and examine the housing units and to interview tenants and employees for the purpose of verifying compliance with the regulatory agreement.

10. Marketing Program. The regulatory agreement shall contain provisions requiring the owner (i) to prepare and obtain the City's approval of a marketing program for the leasing or sale of the affordable units prior to the issuance of a certificate of occupancy for any portion of the project, (ii) to thereafter market the leasing or sale of the affordable units in accordance with the marketing program, and (iii) to provide City with periodic reports with respect to the leasing or sale of the affordable units.

11. Management Plan. The regulatory agreement shall contain uniform provisions regarding property management and management responsibilities and shall require the owner to prepare and obtain the City's approval of a management plan for the project prior to the issuance of a certificate of occupancy for any portion of the project, which sets forth in detail the owner's property management duties, including, but not limited to, a plan to manage and maintain the site and the affordable units; procedures for the selection of tenants of rental affordable units, including a description of how the owner plans to certify the eligibility of tenant households; procedures for annually verifying income and recertifying the eligibility of tenants of rental affordable units; the standard form(s) of rental agreement(s) the owner proposes to enter into with tenants of affordable units; procedures for the collection of rent; procedures for eviction of tenants; procedures for ensuring that the required number and unit size mix of rental affordable units in is maintained and that "floating" affordable units do not become congregated to a certain area of the building or project; the owner's procedures for complying with its monitoring and

recordkeeping obligations; the rules and regulations of the property and manner of enforcement; a security system and crime prevention program.

12. Provisions regarding Section 8 Certificates. For projects containing rental affordable units, the regulatory agreement shall include uniform provisions regarding the acceptance of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, or its successor (i.e., "Section 8 certificates"), which shall include the following requirements and limitations:

a. The owner shall accept as tenants persons who are recipients Section 8 certificates on the same basis as all other prospective tenants; provided, the owner shall not rent one of the affordable units to a tenant household holding a Section 8 certificate unless none of the housing units not restricted to occupancy by the affordability covenants are available. If the only available housing unit is an affordable unit, the owner shall no longer designate the housing unit rented to a tenant household holding a Section 8 certificate as an affordable unit, shall designate the next-available housing unit as an affordable unit, and shall make available, re-strict occupancy to, and rent such newly designated affordable unit to a qualified tenant at the applicable affordable rent pursuant to the affordability covenants, such that at all times reasonably possible all of the required affordable units shall not be occupied by tenants holding Section 8 certificates.

b. Furthermore, in the event the owner rents an affordable unit to a household holding a federal certificate, the rental agreement (or lease agreement, as applicable) between the owner, as landlord, and the tenant shall expressly provide that monthly rent charged shall be the affordable rent required for the affordable unit (not fair market rent) and that the rent collected directly from such tenant holding a federal certificate shall be not more than the specified percentage of the tenant's actual gross income pursuant to the applicable federal certificate program regulations; i.e., the rent charged to such tenant under the rental agreement shall be the affordable rent chargeable under the affordability covenant and not fair market rent for the area, as would otherwise be permitted under the applicable federal certificate program.

c. The owner shall not apply selection criteria to Section 8 certificate holders which are more burdensome than criteria applied to any other prospective tenants.

d. If and to the extent these restrictions conflict with the provisions of Section 8 of the United States Housing Act of 1937 or any rules or regulations promulgated thereunder, the provisions of Section 8 of the United States Housing Act of 1937 and all implementing rules and regulations thereto shall control.

13. Annual Monitoring Fee. Each regulatory agreement shall contain a provision requiring the Owner to reimburse City for the estimated reasonable costs incurred by the City in monitoring the owner's compliance with, and otherwise administering, the

regulatory agreement, including, but not limited to, City's review of annual compliance reports and conduct of inspections and/or audits.

E. Recordation. Each regulatory agreement entered into pursuant to this section shall be recorded as a covenant against the property prior to final or parcel map approval, or, where the housing development project does not include a map, prior to issuance of a building permit for any structure in the housing development project. The regulatory agreement shall remain a senior, non-subordinate covenant and as an encumbrance running with the land for the full term thereof. In no event shall the regulatory agreement be made junior or subordinate to any deed of trust or other documents providing financing for the construction or operation of the project, or any other lien or encumbrance whatsoever for the entire term of the required covenants.

F. Delegation of Authority. The City Manager is authorized to approve and execute each regulatory agreement and any amendments thereto on behalf of the City. The City shall maintain authority of each regulatory agreement and the authority to implement each regulatory agreement through the City Manager. The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of each regulatory agreement on behalf of City.

G. Fees. The City may charge a fee or fees to recover the City's reasonable costs to implement the provisions of this Section. Any such fees shall be adopted by resolution of the City Council.

F. Reimbursement of Professional Fees and Costs. To the extent not factored into the fee or fees established pursuant to subsection G, in addition to such fees, the applicant and/or owner shall reimburse the City for the actual fees and costs charged for the services of attorneys and/or other professional third-party consultants engaged by the City to provide consultation, advice, analysis, and/or review or preparation of documents in connection with the following:

1. Preparation of the regulatory agreement.

2. Review of the initial marketing plan and management plan required as part of the regulatory agreement entered into pursuant to this section and any amendments thereto.

3. Review of annual compliance reports submitted by an owner pursuant to a regulatory agreement.

4. Inspections and audits.

9.60.060 Dwelling Unit Protection Regulations.

A. Purpose. The purpose of this Section is to implement subdivision (d) of Government Code Section 66300 (Housing Crisis Act), which requires developers of new housing development projects to replace demolished residential dwelling units and protected units and to provide relocation assistance and other benefits to existing occupants of demolished protected units.

B. Effective Period. This Section shall remain in effect for the period during which the provisions of Government Code Section 66300 pertaining to replacement housing and relocation benefits remain in effect. If said provisions are repealed, this Section shall be deemed repealed as of the same date and shall no longer be applied, unless otherwise provided by a later enacted ordinance.

C. Applicability. This Section applies to all housing development projects, as defined in Government Code Section 69505.5, whether involving discretionary or nondiscretionary approvals, including, but not limited to, the following:

1. A proposal to construct one or more single-family dwellings;

2. A proposal to construct an accessory dwelling unit;

3. A proposal to construct an SB 9 two-unit residential development;

4. A proposal to construct a duplex or triplex;

5. A proposal to construct a multiple-family dwelling; and

6. A proposal to construct a mixed-use development project consisting of residential and non-residential uses.

D. Definitions. As used in this section, the following terms shall have the following meanings:

1. "Affordable housing cost" has the same meaning as defined in Health and Safety Code Section 50052.5.

2. "Affordable rent" has the same meaning as defined in Health and Safety Code Section 50053.

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

4. "Lower income households" has the same meaning as defined in Health and Safety Code Section 50079.5.

5. "Protected unit" shall have the same meaning as defined in subdivision (d) of Government Code Section 66300 and includes, but is not limited to, the following:

a. Existing or previously demolished residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the five-year period preceding the application submittal date; and

b. Existing or previously demolished residential dwelling units that are or were rented by lower or very low income households within the five-year period preceding the application submittal date.

6. "Relocation Assistance Law" shall mean Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and its related implementing regulations.

7. "Very low income households" has the same meaning as defined in Health and Safety Code Section 50105.

E. Replacement of Dwelling Units. If a housing development project will require the demolition of one or more residential dwelling units, the project shall create at least as many residential dwelling units as will be demolished.

F. Replacement of Protected Units. If a housing development project is located on a parcel or parcels on which protected units are or were located, the project shall comply with the following:

1. Number of Total Units Required. The project shall include at least as many total dwelling units as the greatest number of permitted dwelling units that existed on the project site within the five-year period preceding the application submittal date.

2. Number of Replacement Protected Units Required. The project shall replace all previously demolished protected units and all existing protected units that will be demolished as part of the project in accordance with this Section. All replacement protected unit calculations resulting in factional units shall be rounded up to the next whole number.

3. Projects Involving Demolition of Occupied Protected Units. If any existing protected units to be demolished are occupied on the date of application submittal, the housing development project shall provide at least the same number of replacement dwelling units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If a project site containing occupied protected units to be demolished also contains unoccupied protected units that will be demolished as part of the project, or previously contained protected units that were demolished within the five-year period preceding the application submittal date, the housing development project shall also provide at least the same number of dwelling units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income of the existing or last household in occupancy of any protected units is not known, it shall be rebuttably presumed that lower income renter households occupied these protected units in the same proportion of lower income renter households to all renter households within the City of Garden Grove, as determined by the most recently available data from the United States Department of Housing and Urban Development's

Comprehensive Housing Affordability Strategy database, and replacement protected dwelling units shall be provided in that same percentage.

4. Projects Only Involving Vacated or Demolished Protected Units. If all protected units on the site of a housing development project are vacant or have been demolished within the five-year period preceding the application submittal date, the housing development project shall provide at least the same number of dwelling units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application submittal date to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these protected units in the same proportion of low-income and very low income renter households to all renter households within the City of Garden Grove, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database, and replacement protected dwelling units shall be provided in that same percentage.

5. Single-Family Projects Involving a Single Protected Unit. Notwithstanding subsections 3 and 4, above, if a housing development project consists of a single residential unit on a site with a single protected unit, that protected unit may be replaced with a unit of any size at any income level.

6. Location of Protected Units. Except as provided in the next sentence, dwelling units required to replace protected units shall be located on the same parcel or parcels as other units in the proposed new housing development project. Notwithstanding the preceding sentence, subject to approval of the Department Director, an applicant may locate a replacement unit on a different parcel in the City zoned for residential use, provided that (i) the development of units on different parcels is proposed as part of, and in the same, application as the remainder of the housing development project, (ii) the other parcel is zoned for residential use and all objective general plan, zoning, and other standards and requirements are met, and (iii) the applicant demonstrates that no residential tenants on the other parcel have been or will be displaced as a result of development of the replacement unit.

7. Timing of Construction of Replacement Units. All replacement units shall be constructed concurrently with or prior to other units in the housing development project. The City shall not issue a certificate of occupancy for any other units in a housing development project until certificates of occupancy have been issued for the replacement unit(s).

8. Affordability Period. All rental replacement units shall be made available to lower or very low income households, as applicable, at an affordable rent for at least 55 years.

9. Regulatory Agreement Required. The record owner(s) of the property shall enter into a regulatory agreement with City pursuant to section 9.60.050.

G. Benefits to be Provided to All Occupants of Protected Units.

1. Right to Remain in Occupancy Pending Demolition. The record owner of an occupied protected unit that will be demolished as part of a housing development project shall allow the existing occupants of the protected unit to occupy the unit until six months before the start of construction activities with proper notice, pursuant to the Relocation Assistance Law. The record owner shall deliver a notice of intent to terminate residency to the Department Director and to the occupant household.

2. Right to Return if Demolition Does Not Proceed. The record owner of an occupied protected unit that will be demolished as part of a housing development project shall allow any existing occupants of the protected unit that are required to leave the unit to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market. The notice of intent to terminate residency required pursuant to subsection a. shall include notice of this right. In addition, this right shall be memorialized in a written agreement, covenant, or other document that is enforceable by the occupant(s) of the protected unit, the form of which shall be subject to review and approval by the Department Director.

H. Benefits to be Provided to Occupants of Protected Units that are Lower Income Households.

1. Right of First Refusal for a Comparable Unit in New Housing Development Project.

a. Except as provided in subsection H.1.b., below, the record owner of a protected unit that will be demolished as part of a housing development project shall agree to provide existing occupants of the protected unit to be demolished as part of a housing development project that are lower income households with a right of first refusal for a comparable dwelling unit available in the new housing development affordable to the household at an affordable rent or affordable housing cost. A comparable dwelling unit is a dwelling unit containing the same number of bedrooms as the demolished protected unit, except that where the protected unit is a single-family home that contains four or more bedrooms, a comparable unit is a unit containing three bedrooms. The right of first refusal shall be memorialized in a written agreement, covenant, or other document that is enforceable by the occupant(s) of the protected unit, the form of which shall be subject to review and approval by the Department Director.

b. Subsection H.1.a. shall not apply to (i) a housing development project that consists of a single residential unit located on a site where a single protected unit is being demolished, or (ii) units in a housing development in which 100 percent of the units, exclusive of a manager's unit or units, are reserved for lower income households, unless the occupant of the protected unit qualifies for residence in the

new development and providing a comparable unit to the occupant would not be precluded due to unit size limitations or other requirements of one or more funding sources of the housing development project.

2. Relocation Benefits.

a. The applicant and/or the record owner of a protected unit that will be demolished as part of a housing development project shall provide existing occupants of the protected unit to be demolished as part of a housing development project that are lower income households with relocation benefits consistent with the requirements of the Relocation Assistance Law. By way of example, said relocation benefits may include, without limitation, advisory assistance in finding comparable new housing, payment of moving expenses, and rental assistance payments.

b. The applicant shall engage a qualified third-party contractor or consultant (a "relocation consultant") approved by the Department Director to determine the eligibility of occupants for benefits pursuant to this Section, prepare a relocation plan, and oversee the provision of the required relocation benefits.

c. The applicant's relocation consultant shall prepare a written relocation plan consistent with the provisions of the Relocation Assistance Law, which plan shall be subject to review and approval by the Department Director. The relocation plan shall include, without limitation, provisions addressing the following:

i. determination of eligibility requirements;

ii. identification of eligible occupants;

iii. occupant interviews and needs assessments;

iv. an evaluation of the availability of comparable replacement housing within the relevant geographic area;

v. identification of specific replacement housing options;

vi. the provision for relocation advisory services to affected occupants;

vii. a description of the relocation benefits available to eligible occupants;

viii. a process for the provision of benefits and the submission of benefit claims by eligible occupants;

ix. a process for occupants to appeal benefit determinations; and

x. procedures for providing the benefits required pursuant to Subsections G and H, above, including copies of the required notices, agreements, and other forms needed to implement the provision of said benefits.

d. Prior to the issuance of a grading or building permit for the housing development project, the relocation consultant shall provide a letter to the Department Director certifying that the relocation process has been completed and that all required relocation benefits have been provided.

I. Reimbursement of City's Fees and Costs to Implement this Section.

A. Reimbursement of Professional Fees and Costs. If benefits are required to be provided to the occupants of protected units pursuant to Subsections G or H of this Section, the applicant shall reimburse the City for the actual fees and costs charged for the services of attorneys and/or other professional third-party consultants engaged by the City to provide consultation, advice, analysis, and/or review or preparation of documents in connection with the review of a relocation plan, notices, or other required forms and documents and the monitoring and/or enforcement of compliance with requirements for provision of benefits. Concurrent with or prior to the applicant's submittal of any notice, agreement, plan, or other document requiring approval of the Department Director pursuant to Subsections G or H, the applicant shall execute a reimbursement agreement with the City in a form approved by the City Attorney and provide a deposit to the City in an amount sufficient to cover the estimated total professional fees and costs to be incurred by the City, as determined by the Department Director in his or her reasonable discretion. The City Manager is authorized to execute said reimbursement agreement on behalf of the City. Upon certification that all required benefits have been provided, the Department Director shall provide the applicant with an invoice containing an accounting of the actual legal and third-party consulting costs incurred by the City and the amount(s) of all deposits provided by the applicant. If the actual legal and third-party consulting costs incurred by the City for such review are less than the amount of the deposit(s) made by the applicant, the City shall reimburse the applicant for the difference at the time it provides the invoice. If the actual legal and third-party consulting costs incurred by the City exceed the amount of the deposit(s) made by the applicant, the applicant shall pay City the difference within thirty (30) days of receipt of the invoice from the City, and no grading or building permit for the housing development project shall be issued until said amount is paid in full.

B. In addition to the reimbursement of professional fees and costs pursuant to Subsection I.A., above, the City may charge a fee or fees to recover the City's other reasonable costs to implement the provisions Subsection (d) of Government Code Section 66300 and this Section. Any such fees shall be adopted by resolution of the City Council.

9.60.070 Transitional and Supportive Housing Projects

A. Transitional Housing and Supportive Housing. In accordance with subdivision (c)(3) of Government Code Section 65583, transitional housing and supportive housing are considered residential uses of property and shall be subject only to those approval requirements, development standards, and restrictions that apply to other residential dwellings of the same type or configuration in the same zone.

B. Supportive Housing For the Homeless.

1. Notwithstanding any other provision of this Code, pursuant to Government Code Section 65651, a supportive housing for the homeless development shall be permitted as a use by right in any zoning district where multiple-family dwellings and residential/commercial mixed use developments are permitted, including nonresidential zones where multiple-family dwellings are permitted.

2. The Department Director shall review and approve or disapprove a proposed supportive housing for the homeless development within the time periods set forth in Government Code Section 65653.

3. The following provisions shall apply to a supportive housing for the homeless development:

a. The development shall be subject to the same objective development and design standards, policies, and fees that apply to multiple-family residential developments or multiple-family residential components of mixed-use projects in the zone in which the development is located; provided, however, that, if the proposed development is located within one-half mile of a public transit stop, no minimum parking requirements shall apply to the units occupied by supportive housing residents.

b. The development shall satisfy all requirements set forth in Government Code Section 65651.

c. The applicant shall submit for review and approval by the Department Director a plan for providing on-site supportive services, along with supporting documentation, in accordance with Government Code Section 65652. Such on-site supportive services may include transportation services, counseling services, individual case management, job readiness training, assistance in applying for competitive employment, housing retention assistance services, health status improvement services, mental health services, drug rehabilitation services, parenting services, and budgeting and life skill services.

d. The property owner shall enter into a regulatory agreement with the City pursuant to section 9.60.050 to ensure compliance with the provisions of Government Code Section 65651 and this subsection 9.60.070.B.

C. Low-Barrier Navigation Centers.

1. Notwithstanding any other provision of this Code, a low-barrier navigation center meeting the requirements of Government Code Sections 65660 *et. seq*. shall be permitted as a use by right in any zoning district where residential/commercial mixed use developments are permitted and in any nonresidential zoning district where multiple-family dwellings are permitted.

2. The Department Director shall review and approve or disapprove a proposed low-barrier navigation center within the time periods set forth in Government Code Section 65664.