

Danville, Ca Municipal Code: Affordable and Inclusionary Housing

<http://municipalcodes.lexisnexis.com/codes/danville/>

Chapter XXXII Planning and Land Use

Article VII. Additional Requirements for Development

32-73 Inclusionary Housing for Affordable Residential Housing

32-73.1 Title

32-73.2 Findings

32-73.3 Purpose

32-73.4 Definitions

32-73.5 Applicability

32-73.6 Scope

32-73.7 Incentives

32-73.8 In Lieu Participation Fees

32-73.9 Application Process

32-73.10 General Requirements

32-73.11 Fee Waivers and Priority Processing

32-73.12 Violation-Penalty

32-73.13 Enforcement

32-73.14 Appeals

32-73.15 Severability

32-73.16 For-Rent Below Market Rate Second Units

32-74 Density Bonus for Affordable Residential and/or Senior Citizen
Developments

32-74.1 Title

32-74.2 Findings

32-74.3 Purpose

32-74.4 Definitions

32-74.5 Density Bonus Defined

32-74.6 Applicability

32-74.7 Incentives

32-74.8 Application Process

32-74.9 General Requirements

32-74.10 Violation-Penalty

32-74.11 Enforcement

32-74.12 Appeal

**32-73 INCLUSIONARY HOUSING FOR AFFORDABLE RESIDENTIAL
HOUSING.**

32-73.1 Title. This section shall be entitled the “Inclusionary Housing Ordinance for Affordable Residential Housing in the Town of Danville.” (Ord. #94-06, § 1)

32-73.2 Findings. The Town Council of the Town of Danville finds that Danville is experiencing a housing shortage for very low, low and moderate income households. A goal of the Town is to achieve a balanced community with housing available for households of a range of income levels. Increasingly, households with very low, low and moderate incomes who work and/or live within the Town are unable to locate housing at prices they can afford and are increasingly excluded from living in the Town. The Town finds that the high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by very low, low or moderate income households, and that continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land. The Town further finds that the housing shortage for households of very low, low and moderate incomes is detrimental to the public health, safety and welfare, and further that it is a public purpose of the Town, and a public policy of the State of California as mandated by the requirements for a Housing Element of the Town's General Plan, to make available an adequate supply of housing for persons of all economic segments of the community. (Ord. #94-06, § 1)

32-73.3 Purpose. The purpose of this section is to enhance the public welfare and assure that new residential developments which include two (2) or more residential dwelling units or lots contribute to the attainment of the Town's housing goals by increasing the production of units affordable by households of very low, low and moderate income, and additionally stimulating funds for development of very low, low and moderate income housing. The regulations set forth in this chapter shall apply to all areas of the Town of Danville exclusive of the area covered by the adopted Danville Redevelopment Plan. (Ord. #94-06, § 1)

32-73.4 Definitions. For the purposes of this section, certain words and phrases shall be interpreted as set forth in this section, unless it is apparent from the context that a different meaning is intended.

- a. *Affordable unit* means a residential unit for which the mortgage or rental payment does not exceed that affordable to very low, low and moderate income households, as determined periodically by the United States Department of Housing and Urban Development based on the Alameda County/Contra Costa County Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Appropriate mortgage and rental rates shall be calculated on the basis of gross annual household income considering household size and unit size, income of all wage earners and all other sources of household income. For purposes of this section;
1. Affordable units for very low income households means units with housing costs affordable to households whose gross annual income is fifty percent (50%) or less of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.
 2. Affordable units for low income households means units with housing costs affordable to households whose gross annual income is between fifty-one percent (51%) and eighty percent (80%) of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.
 3. Affordable units for moderate income households means units with housing costs affordable to households whose gross annual income is between eighty-one percent (81%) and one hundred ten percent (110%) of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.

- b. *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town real property development permits and approvals.
- c. *Approval* means approval by the Town of a discretionary permit such as a tentative map, planned development or use permit for a residential development project.
- d. *Below Market Rate or BMR* means residential units sold or rented at rates affordable to very low, low or moderate income households.
- e. *Danville employee* means any head of household, or in the case of married couples either spouse, who has worked within the Town limits continually for one (1) year in the year immediately preceding the occupancy of an affordable unit.
- f. *Danville resident* means any person who has lived within the Town limits of Danville for one (1) year in the year immediately preceding the occupancy of an affordable unit.
- g. *Developer* means the same as “applicant” (see above definition).
- h. Household means one (1) person living alone or two (2) or more persons sharing residency and who are related by blood, marriage or operation of law.
- i. Housing cost means the monthly mortgage principal and interest, property taxes, and homeowner association fees, where applicable, for ownership units; and the monthly rent and an appropriate utility allowance for rental units.
- j. Incentive means a benefit offered by the Town to facilitate construction of residential developments which include BMR units. Among others, benefits may include fee waivers or reductions for BMR units, and flexibility and/or relaxation of development regulations. For purposes of this section, any incentive granted hereunder shall be deemed a direct subsidy of the project by the Town.
- k. In lieu participation fee means a fee paid to the Town by an applicant for a residential development in the Town in lieu of providing the inclusionary affordable units required by this section.
- l. Project owner means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.
- m. Residential development means and include developments of two (2) or more units or lots for, without limitation, detached single family dwellings, multiple dwelling structures, groups of dwellings, condominium conversions, cooperative developments and land subdivisions intended to be sold to the general public.
- n. Secondary unit means a residential unit which provides complete, independent living facilities for one (1) or more persons. It includes permanent provisions for living, sleeping, cooking, eating and sanitation on the same parcel as the primary unit.
- o. Town means the Town of Danville or its designee, or any entity with which the Town contracts with to administer this section.
- p. Unit type means dwelling units with similar floor area and number of bedrooms. (Ord. #94-06, § 1)

32-73.5 Applicability. All residential developments with at least eight (8) units or lots for which an approval is secured after May 5, 1994 shall be subject to the regulations of this section. Projects developed consistent with the regulations of the Density Bonus Ordinance No. 94-05* shall be considered to have satisfied all requirements contained in this section, (Ord. #94-06, § 1)

*Editor's Note: Ordinance 94-05 is codified as Section 32-74 of this Code.

32-73.6 Scope. Every approval for residential development shall assure provision of one (1) or more BMR units according to the following regulations:

- a. Residential development with resultant densities less than or equal to seven (7) units an acre shall provide a number of BMR units equal to ten percent (10%) of the number of market rate units in the project.
- b. Residential developments with resultant densities of greater than seven (7) units an acre:
 1. Residential developments up to twenty (20) units in size shall provide a number of BMR units equal to ten percent (10%) of the number of market rate units in the project.
 2. Residential developments containing twenty-one (21) or more units shall provide a number of BMR units equal to fifteen percent (15%) of the number of market rate units in the project.
 3. All residential developments with densities of thirteen (13) units or more per acre shall construct the affordable units as a part of the residential development.
- c. At the discretion of the Town Council, affordable units required pursuant to this section may be provided at a location within the Town other than the residential development which creates the requirement for the affordable units.
- d. If the BMR units produced in a project with a resultant density of greater than seven (7) units an acre are of a physical design (i.e., the overall project density, the BMR unit type and/or the BMR unit size) such that they will remain affordable to qualifying moderate income households even if sold or rented at market rate levels, the number of BMR units required to be supplied in the project may be reduced to ten percent (10%) of the overall project count. The determination to reduce the number of affordable units required to be supplied in the project shall be made by the Town Council. (Ord. #94-06, § 1)

32-73.7 Incentives. An applicant may request a modification of the following standards where such waiver or modification is necessary to make the provision of BMR units economically feasible. The request shall be accompanied by information sufficient to demonstrate that the incentive is necessary to make the affordable units economically feasible:

- a. A reduction in site development standards and modification of Zoning Code requirements or architectural design standards exceeding State building standards including, but not limited to, a reduction in setback, square footage, minimum lot size, minimum lot dimensions, street section, sidewalks, open space, landscaping or number of required parking spaces.
- b. Relaxation of development standards for new subdivisions incorporating BMR secondary units into a single family development, including, but not limited to modifications in unit setback requirements, number of bedrooms, parking requirements or other regulations contained in the Town's second unit ordinance, as may be amended from time to time.
- c. Other regulatory incentives or concessions proposed by the applicant or the Town which result in identifiable cost reductions applicable to the BMR units within a residential development.

Where the applicant requests one or more of the above listed incentives, a preliminary project financial report shall be submitted (pro forma) along with the application for the project in order to evaluate the financial need for the requested incentive(s). At the cost of applicant, the Town may retain a consultant to review the financial report. If the applicant is a nonprofit organization, the Town may elect to pay the cost of the consultant upon approval by the Town Council. (Ord. #94-06, § 1)

32-73.8 In Lieu Participation Fees. In lieu participation fees may be appropriate for particular projects not suitable for inclusionary affordable units due to factors including, but not limited to, location, availability of services, extreme topography, development density, and environmental constraints. In such cases the applicant, upon approval of the Town Council, may contribute fees in lieu of providing inclusionary affordable units. Such fees shall be known as "in lieu participation fees." Applicants may make payment of in lieu participation fees in residential developments except that in lieu participation fees may not be authorized for residential developments with densities of thirteen (13) units or more per acre.

- a. The in lieu fee shall be calculated based on the subsidy differential between what a moderate income household (earning one hundred ten percent (110%) of current SMSA median income), adjusted for expected household size and appropriate unit size, can afford to pay for housing and the estimated total cost of a new, non-BMR unit of appropriate size, as determined to the satisfaction of the Town. The in lieu fee shall be calculated on a project-by-project basis with the per unit fee paid subject to review and approval by the Chief of Planning.
- b. The in lieu fee for the entire residential development shall be due prior to occupancy of the first unit. (Ord. #94-06, § 1)

32-73.9 Application Process. The decision-making body for a formal application meeting the requirements of this section shall be the Planning Commission and/or Town Council, whichever is authorized to approve the associated discretionary permit. (Ord. #94-06, § 1)

32-73.10 General Requirements.

- a. All BMR units shall be sold or rented as affordable units for occupancy only by very low, low or moderate income households.
- b. The goal is to have all BMR units remain affordable. Should a determination be made by the Town Council that the physical design of the BMR units is such to ensure that the unit will remain affordable in the long term to qualifying moderate income households (see subsection 32-23.6d), the term of affordability may be reduced to a minimum term of not less than ten (10) years.
- c. All fractions of units or lots equal to or greater than .75 of a unit shall be rounded up to the nearest whole unit.
- d. The maximum sales price of all for-sale BMR units shall be no more than that which would be affordable to a moderate income household earning one hundred ten percent (110%) of the current SMSA median income, adjusted for expected household size and appropriate unit size. A maximum of thirty-five percent (35%) of household income shall be assigned to the housing costs for the for-sale BMR unit.
- e. The maximum rental price of all for-rent BMR units shall be no more than that which would be affordable to a moderate income household earning one hundred ten percent (110%) of the current SMSA median income, adjusted for expected household size and appropriate

unit size. A maximum of thirty percent (30%) of household income shall be assigned to the housing costs for the for-rent BMR unit.

- f. Households with eligible Danville residents shall be given first preference for BMR units; second preference shall be given to households with eligible Danville employees; third preference shall be given to all other eligible households.
- g. Requirements for BMR units shall be established as conditions of approval for the residential development. Compliance with the regulations of this section shall be evidenced by an affordable housing agreement between the applicant and the Town Manager completed and recorded on the deed to each affected and shall run with the land.
 - 1. The affordable housing agreement shall indicate the intended household type (i.e., for-sale or rental occupancies), number of BMR units and their corresponding number of bedrooms; standards for maximum qualifying household incomes; standards for maximum sales prices or rental rates; party/process responsible for certifying tenant incomes; construction scheduling, how vacancies will be marketed and filled; restrictions and enforcement mechanisms binding on property upon sale or transfer; maintenance provisions; and any other information as required by the Town to comply with the conditions of approval for the residential development.
 - 2. The affordable housing agreement shall include a provision which allows the Town to assign its authority to regulate and enforce the agreement to the Contra Costa County Housing Authority, a nonprofit housing agency or other similar entity.
 - 3. Proof of recordation of the affordable housing agreement on the deed of each BMR unit in a residential development shall be deemed a condition precedent to occupancy.
 - 4. The provisions of this section shall not apply to transfers by gift, devise or inheritance to the property owner's spouse or children; transfers of title to a spouse as part of a divorce or dissolution proceeding; acquisition of title interest therein in conjunction with marriage provided, however, that the deed restrictions shall continue to run with the title to said property following such transfers.
- h. BMR units in a residential development and phases of a residential development shall be constructed concurrently with or prior to the construction of non-BMR units.
- i. BMR units shall be provided as follows:
 - 1. If the BMR units are built within the project, they are not required to be evenly dispersed throughout the development.
 - 2. BMR are not required to represent the predominant unit type in the project (e.g., locating affordable attached duet units on corner lots in a primarily single family development or including affordable secondary units into a primarily single family development).
 - 3. The exterior design and character of the BMR units shall be substantially consistent with that of the non-BMR units in the residential development.
 - 4. There may be a reduction of interior amenities provided within the BMR units as may be necessary to retain project affordability.
- j. For-sale BMR units shall not be rented unless specifically authorized by the Town. Said authorization shall be formalized by way of execution of an amended affordable housing agreement.

- k. The Town may contract with the Contra Costa County Housing Authority, or other similar entity, to administer the sale, rental and/or in lieu participation fee provisions of this section.
- l. The Town Manager may establish administrative guidelines for administration of the provisions of this section. (Ord. #94-06, § 1)

32-73.11 Fee Waivers and Priority Processing.

- a. To increase the feasibility of providing affordable units, the Town Council, by resolution, may waive or reduce certain Town fees applicable to the affordable units or the residential development for which they are a part.
- b. A project which provides inclusionary units shall be entitled to priority processing by the Town. (Ord. #94-06, § 1)

32-73.12 Violation-Penalty. It is unlawful for any person, firm, corporation, partnership or other entity to violate any provision or to fail to comply with any of the requirements of this section. A violation of any of the provisions or failing to comply with any of the requirements of this section shall constitute a misdemeanor; except that, notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this section may, at the discretion of the enforcing authority, be charged and prosecuted as an infraction. (Ord. #94-06, § 1)

32-73.13 Enforcement.

- a. The Town Manager is hereby designated the enforcing authority of this section.
- b. The provisions of this section shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this section. No building permit or occupancy permit shall be issued, nor any development approval be granted, which does not meet the requirements of this section.
- c. In the event that it is determined that a BMR unit is being occupied as a rental unit and that rents in excess of those allowed by operation of this section have been charged, the Town may take the appropriate legal actions or proceedings to recover, and the project owner shall be obligated to pay to the tenant (or to the Town in the event the tenant cannot be located), any excess rental charges.
- d. The Town may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. (Ord. #94-06, § 1)

32-73.14 Appeals. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by subsections 1-8.1 through 1-8.5 of the Danville Municipal Code. (Ord. #94-06, § 1)

32-73.15 Severability. The provisions of this section are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sections, sentences, words or parts thereof of the section or their applicability to other persons or circumstances. (Ord. #94-06, § 1)

32-73.16 For-Rent Below Market Rate Second Units. Notwithstanding the provisions of any other section contained within this ordinance, and if it is determined to be appropriate by the Danville Town Council, the applicant may fulfill a development's inclusionary housing requirements with the development of second units, as, defined in this section.

- a. Applicability. The provisions of this section shall apply to all new residential developments with five (5) or more lots throughout the Town, with the exception of developments established within the Downtown Redevelopment Area.
- b. Scope. If the Town Council determines that development of for-rent Below Market Rate (BMR) second units would be appropriate for a project, the minimum number of for-rent BMR second units supplied in a project shall be equivalent to twenty-five percent (25%) of the number of market rate units established in the project.
- c. Affordable Housing Agreement. An affordable housing agreement, as generally provided for in subsection 32-73.10g, shall be recorded as a deed restriction on the property which incorporates a for-rent BMR second unit.
- d. Qualifying Households: Maximum Income of Renters. The for-rent BMR second unit shall not be rented to a household with an income which exceeds the high end of the "low" income range (currently seventy-two percent (72%) of the current SMSA median income) as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5, adjusted for household size. (Note: The Town shall advise the owners of any annual changes in the SMSA median incomes).
- e. Restriction on Rental Rate. The rental rate shall not exceed what is affordable to a household earning the high end of the "low" income range (currently seventy-two percent (72%) of the current SMSA median income), adjusted for household size and providing for appropriate allowance for utilities. A maximum of thirty percent (30%) of the household income shall be assigned to the housing costs for the for-rent BMR second unit (this shall cover both the unit's rental rate and an appropriate allowance for utility costs). The Town shall advise the owner of annual changes in the allowable rental rate (and shall provide a schedule for utility allowance adjusted for household size).
- f. Self-Reporting. The owner shall self-report the status of the for-rent BMR second unit (using a Town-supplied reporting form) in conjunction with receipt of the Town's annual rental rate update report. Owners of the for-rent BMR second units are not required to continuously market and rent the second units. If the Town determines that all the for-rent BMR units within a particular development have met the occupancy goal and intent of this ordinance section, then the Town may eliminate the requirement to self-report the status of the for-rent second unit(s) in that development.
- g. Design Parameters. The for-rent BMR second units shall be designed such that the physical layout of the unit and its interrelationship with the primary unit ensures its availability as a self-contained viable second unit.
 1. Architectural and Physical Design. For-rent BMR second units shall be architecturally compatible with main residential unit in roof pitch, scale, colors, materials, trim, windows, as well as other exterior physical features. The maximum floor area of a for-rent BMR second unit shall be as defined in subsection 32-73.16g,5.
 2. Relationship to Main Residence.
 - (a) The second unit may be detached or attached to the main residence;

- (b) If detached second units are proposed, each second unit shall be designed to provide privacy for the main residential unit (i.e., minimum number of windows facing the main unit, relative location of entry areas, etc.) and shall meet all setback requirements applicable to the main residence;
- (c) The second unit shall have a separate entrance from the main unit;
- (d) There shall be no direct access from main residence to the second unit;
- (e) There shall be a wall separating the garage of the primary residence and the garage/parking area of the secondary unit;
- (f) The second unit shall have a separate mailing address to allow independent contact with the unit's occupants; and
- (g) Any proposed modifications to the second unit must secure prior review and approval by the Chief of Planning.

3. Adequate Facilities. At the time the tentative map associated with the project is reviewed, a finding must be made that the following adequate facilities are provided:

- (a) The second unit shall have complete independent living facilities, adequate to meet the needs of at least a one-person household;
- (b) Permanent provisions for food preparation, sleeping, and bathing needs shall be provided;
- (c) Disposal of sanitary waste shall be provided by the public sanitary sewer district;
- (d) Provision of potable water shall be provided by the municipal utility district;
- (e) To function as an independent living unit, the second dwelling shall be required to have its own water heater, washer/dryer hook-ups, air-conditioning/heating unit (with independent cooling/heating controls).

4. Parking Requirements. The second unit shall have its own on-site covered parking space (nine by nineteen (9' x 19') feet, minimum clear), which shall be walled off and accessed separately. The on-site parking space for the second unit may be provided as a garage or as a carport.

5. Minimum Lot Size/Maximum Second Unit Size/Floor Area Ratio.

- (a) The second unit shall be ≤ 650 square feet for developments with lots averaging $\geq 8,000$ square feet (i.e., projects with a density ≤ 4.15 dwelling units per acre);
- (b) The second unit shall be ≤ 500 square feet for developments with lots averaging $< 8,000$ square feet (i.e., projects with a density > 4.15 dwelling units per acre);
- (c) Projects with a typical minimum lot size of $\leq 6,500$ square feet (i.e., equivalent to a density of ≥ 5 dwelling units per acre) shall not be allowed to utilize this approach for meeting their affordable housing requirements;
- (d) The resulting floor area ratio (FAR) for the primary and secondary units on an individual lot shall not exceed sixty percent (60%);
- (e) Deviation from the above-cited dimensional criteria may be considered by the Town Council on a project-by-project basis.

6. Setback requirements will be determined on a project-by-project basis.
- h. Sunset Clause. This section shall remain in effect for three years from the date of its adoption. At the end of this three (3) year period, the Town Council shall review the amendment's effectiveness and shall decide whether to continue to allow use of the for-rent BMR second units as a permanent tool within the Inclusionary Housing Ordinance. (Ord. #98-04, § 1)

32-74 DENSITY BONUS FOR AFFORDABLE RESIDENTIAL AND/OR SENIOR CITIZEN DEVELOPMENTS.

32-74.1 Title. This section shall be entitled the "Density Bonus Ordinance of the Town of Danville." (Ord. #94-05, § 1)

32-74.2 Findings. The Town Council of the Town of Danville finds that Danville is experiencing a housing shortage for very low, low and moderate income households and a similar shortage for households with special housing needs (e.g., with senior and/or handicapped members). A goal of the Town is to achieve a balanced community with housing available for households of a range of income levels and for households with special housing needs. Increasingly, households with very low, low and moderate incomes who work and/or live within the Town are unable to locate housing at prices they can afford and are increasingly excluded from living in the Town. The Town finds that the high cost of newly constructed housing does not, to any appreciable extent, provide housing affordable by very low, low or moderate income households, and that continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land. The Town finds households with special housing needs are also not generally able to find appropriate housing in the Town. The Town further finds that the housing shortage for households of very low, low and moderate incomes and for households with special housing needs is detrimental to the public health, safety and welfare, and further that it is a public purpose of the Town, and a public policy of the State of California as mandated by the requirements for a Housing Element of the Town's General Plan, to make available an adequate supply of housing for persons of all economic segments of the community. (Ord. #94-05, § 1)

32-74.3 Purpose. This section is intended to establish policies which facilitate the development of affordable housing and housing for households with special housing needs. In order to encourage the provision of very low, low, handicapped and senior housing, the Town shall provide a density bonus and, under certain circumstances, shall provide additional incentive(s) to developers of housing who agree to meet the requirements established by this section. The regulations set forth in this section shall apply Town wide. (Ord. #94-05, § 1)

32-74.4 Definitions. For the purposes of this section, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

- a. Affordable unit means a residential unit for which the mortgage or rental payment does not exceed that affordable to very low, low and moderate income households, as determined periodically by the United States Department of Housing and Urban Development based on the Alameda County/Contra Costa County Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Appropriate mortgage and rental rates shall be calculated on the basis of gross annual household income considering household size and

unit size, income of all wage earners and all other sources of household income. For purposes of this section;

1. Affordable units for very low income households means units with housing costs affordable to households whose gross annual income is fifty percent (50%) or less of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50105.
 2. Affordable units for low income households means units with housing costs affordable to households whose gross annual income is between fifty-one percent (51%) and eighty percent (80%) of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.
 3. Affordable units for moderate income households means units with housing costs affordable to households whose gross annual income is between eighty-one percent (81%) and one hundred ten percent (110%) of the current SMSA median income, as published by the California Department of Housing and Community Development pursuant to Health and Safety Code Section 50093.
- b. Applicant means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town real property development permits and approvals.
 - c. Approval means approval by the Town of a discretionary permit such as a tentative map, planned development or land use permit for a project.
 - d. Danville employee means any head of household, or in the case of married couples either spouse, who has worked within the Town limits continually for one (1) year in the year immediately preceding the occupancy of an affordable unit.
 - e. Danville resident means any person who has lived within the Town limits of Danville for one (1) year in the year immediately preceding the occupancy of an affordable unit.
 - f. Developer means the same as “applicant,” see above definition.
 - g. Handicapped means any person meeting the definition of “physically handicapped” per the Fair Employment and Housing Act, Section 12926.
 - h. Household means one (1) person living alone or two (2) or more persons sharing residency and who are related by blood, marriage or operation of law.
 - i. Housing cost means the monthly mortgage (including principal and interest), property taxes, and homeowner association fees, where applicable, for ownership units; and the monthly rent and an appropriate utility allowance for rental units.
 - j. Incentive means a benefit offered by the Town to facilitate construction of housing projects which include restricted occupancy units. Among others, benefits may include fee waivers for restricted occupancy units, flexibility and/or relaxation of development regulations. For purposes of this section, any incentive granted hereunder shall be deemed a direct subsidy of the project by the Town.
 - k. Permits means an approved application by the Town of Danville for a development plan, land use entitlement, subdivision, Planned Unit Development or building permit.

- l. Project means a housing development at one (1) location, including all dwelling units for which permits have been applied for or approved within a twelve (12) month period.
- m. Project owner means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.
- n. Restricted occupancy unit means a unit restricted in such a manner that it is sold or rented at a rate affordable to very low or low income households; a unit restricted in such a manner that it is sold or rented at a rate affordable to moderate income households containing a handicapped household member; or a unit restricted in such a manner that it is occupied by a senior household.
- o. Senior citizen project means a residential project specifically designed and operated to assist senior households, with a minimum of eighty percent (80%) of the units in the project to be occupied by at least one person sixty-two (62) years of age or older, or in the case of projects consisting of at least one hundred fifty (150) units, occupied by at least one (1) person fifty-five (55) years of age or older. To qualify as a senior citizen project, the project must also provide facilities and services for the elderly occupants.
- p. Senior household means a household with at least one (1) member qualifying to be a resident of a senior citizen project. Said household member shall be at least sixty-two (62) years of age, or in the case of development of a senior citizen project consisting of at least one hundred fifty (150) units, shall be at least fifty-five (55) years of age or older.
- q. Town means the Town of Danville or its designee, or any entity with which the Town contracts with to administer this section.
- r. Unit type means dwelling units with similar floor area and number of bedrooms. (Ord. #94-05, § 1)

32-74.5 Density Bonus Defined. For purposes of this section, "density bonus" shall be defined as indicated below.

- a. For projects where the term of the restrictions for the restricted occupancy units is greater than ten (10) years and less than thirty (30) years: "Density bonus" means a density increase of twenty-five percent (25%) over the otherwise maximum allowable density under applicable Zoning Ordinance and Land Use Element of the General Plan, as of the date of the application for development.

For projects where the term of the restrictions for the restricted occupancy units is equal to or greater than thirty (30) years: "Density bonus" means a density increase of at least thirty percent (30%) over the otherwise maximum allowable density under applicable Zoning Ordinance and Land Use Element of the General Plan, as of the date of the application for development. (Ord. #94-05, § 1)

32-74.6 Applicability.

- a. In order to qualify for the density bonus described in subsection 32-74.4a. (i.e., a twenty-five percent (25%) density bonus), a project must consist of five (5) or more dwelling units; must include restricted occupancy units meeting one or more of the following criteria (all percentages of the required number of restricted occupancy units shall be rounded up to the nearest whole unit); and must impose a term for the restrictions applicable to the restricted occupancy units which is greater than ten (10) years and less than thirty (30) years:

1. At least twenty percent (20%) of the total units are restricted for occupancy by low income households, with the maximum housing costs set so as to be affordable by low income households (adjusted to reflect unit type and household size), or
 2. At least ten percent (10%) of the total units are restricted for occupancy by very low income households, with the maximum housing costs set so as to be affordable by very low income households (adjusted to reflect unit type and household size), or
 3. At least ten percent (10%) of the total units are restricted for occupancy by senior households.
- b. In order to qualify for the density bonus described in subsection 32-74.4b. (i.e., a \geq thirty percent (30%) density bonus), a project must consist of five (5) or more dwelling units; must include restricted occupancy units meeting one (1) or more of the following criteria (all percentages of the required number of restricted occupancy units shall be rounded up to the nearest whole unit); and must impose a term for the restrictions applicable to the restricted occupancy units which is \geq thirty (30) years:
1. At least ten percent (10%) of the total units are restricted for occupancy by low income households, with the maximum housing costs set so as to be affordable by low income households (adjusted to reflect unit type and household size), or
 2. At least five percent (5%) of the total units are restricted for occupancy by very low income households, with the maximum housing costs set so as to be affordable by very low income households (adjusted to reflect unit type and household size), or
 3. At least fifty percent (50%) of the total units are restricted for occupancy by senior households, or
 4. At least ten percent (10%) of the total units are restricted for occupancy by moderate income households containing a handicapped person or persons, with one or more physical handicaps, with the maximum housing costs set so as to be affordable by moderate income households (adjusted to reflect unit type and household size).
- c. Projects which meet the requirements set forth in paragraph a. above shall qualify for a twenty-five percent (25%) density bonus.
- d. Projects which meet the requirements set forth in paragraph b. above shall:
1. Qualify for a \geq thirty percent (30%) density bonus and at least one other incentive listed in subsection 32-74.6, unless the Town adopts a finding that the additional incentive is found unnecessary for affordable housing costs or to set rents at qualifying levels for very low income households, for low income households, or for moderate income households with handicapped members, as appropriate; or,
 2. Qualify for other incentives of equivalent financial value based on the land cost per dwelling unit.
- e. If a developer agrees to construct a project with at least two (2) of the items listed in subsection 32-74.5b above, the developer is entitled to an additional incentive and, may at the discretion of the Town, receive an additional density bonus.
- f. Unit calculations do not need to be based on individual subdivisions or parcels. Density bonus units may be permitted in areas within the housing development other than where the restricted occupancy units are located. If the density bonus units are located separate from the restricted occupancy units, such project groups shall, unless otherwise authorized

by the Town, be contiguous and shall be developed simultaneous with the development of the restricted occupancy units. (Ord. #94-05, § 1)

32-74.7 Incentives. An applicant proposing development of a project as described in subsection 32-74.5b. may request a modification of the following standards where such waiver or modification is necessary to make the provision of restricted occupancy units economically feasible. The request shall be accompanied by information sufficient to demonstrate that the incentive is necessary to make the affordable units economically feasible:

- a. A reduction in site development standards, modification of Zoning Code requirements or architectural design standards exceeding State building standards; including, but not limited to, a reduction in setback, square footage, minimum lot size, minimum lot dimensions, street section, sidewalks, open space, landscaping or number of parking spaces.
- b. Approval of mixed use zoning, when consistent with the underlying land use designation, in conjunction with the housing project if commercial, office or other land uses will reduce the cost of the housing development and if the commercial, office or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
- c. Other regulatory incentives or concessions proposed by the developer or the Town which result in identifiable cost reductions may include, but are not limited to, certain Town controlled fees applicable to the restricted occupancy units within a project may be waived. Fees to be waived may be established by the Town Council or Redevelopment Agency on a project by project basis. (Ord. #94-05, § 1)

32-74.8 Application Process.

- a. A developer may submit to the Town a preliminary written proposal for the development of a housing project pursuant to this section prior to the submittal of any formal requests for General Plan amendments, planned unit developments, tentative map approvals or other land use entitlement. The Town shall, within ninety (90) days of receipt of the written proposal, notify the housing developer in writing of the procedures under which it will comply with this section.
- b. The decision-making body for a formal application meeting the requirements of this section shall be the Planning Commission and/or Town Council, whichever is authorized to approve the discretionary permit; unless the project is located within the Redevelopment Area, in which case, the Redevelopment Agency shall be the decision-making body for the project.
- c. A project which provides restricted occupancy units shall be entitled to priority processing. Upon certifying that the application is complete and eligible for priority processing, a project would be immediately assigned to a planner and given priority scheduling. (Ord. #94-05, § 1)

32-74.9 General Requirements.

- a. Restricted occupancy units in projects receiving a density bonus shall remain affordable for a minimum of ten (10) years from the date of issuance of a certificate of occupancy. This minimum reservation period shall be lengthened to a minimum of thirty (30) years for projects receiving both a density bonus and an additional incentive, even if it is not a direct financial contribution. Occupancy restrictions for the restricted occupancy units shall be maintained longer if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

- b. Households with Danville residents who meet the qualifications for occupancy of restricted units will have first preference for restricted occupancy units; second preference will be given to households with Danville employees who meet the qualifications for occupancy of restricted units; third preference shall be given to all other eligible households.
- c. Requirements for restricted occupancy units shall be established as conditions of project approval. Compliance with the conditions of this section shall be evidenced by an affordable housing agreement between the developer and the Town Manager, completed and recorded on the deed to each affected unit prior to issuance of a building permit and shall run with the land.
 - 1. The affordable housing agreement shall indicate the qualification criteria for the target households for the restricted occupancy units (e.g., very low income household, senior household, etc.), the intended household type (i.e., sale or rental restricted occupancy units), the number of restricted occupancy units and their corresponding number of bedrooms; standards for maximum qualifying household incomes for restricted occupancy units with affordability restrictions; standards for maximum rents or sales prices for restricted occupancy units with affordability restrictions; standards for qualifying for occupancy of senior or handicapped restricted occupancy units; party/process responsible for certifying qualifications of households which occupy restricted occupancy units; construction scheduling, how vacancies will be marketed and filled; restrictions and enforcement mechanisms binding on property upon sale or transfer; maintenance provisions; and any other information as required by the Town to comply with the conditions of approval for the project.
 - 2. The affordable housing agreement shall include a provision which allows the Town of Danville to assign its authority to regulate and enforce the agreement to the Contra Costa County Housing Authority, a nonprofit housing agency or other similar entity.
- d. Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of units without occupancy restrictions.
- e. Units shall be provided as follows:
 - 1. Restricted occupancy units shall be dispersed throughout the project.
 - 2. Restricted occupancy units are not required to represent the predominant unit type in the project. Such as, but not limited to, locating affordable attached duet units on corner lots in a primarily single family development.
 - 3. The exterior design and character of the restricted occupancy units shall be substantially consistent with the units without occupancy restrictions in the project. There may be a reduction of interior amenities as may be necessary to attain affordability of the restricted occupancy units.
- f. For-sale restricted occupancy units shall not be rented unless specifically authorized by the Town and a new affordable housing agreement executed and recorded against the property.
- g. Where the developer requests one or more additional incentive, they shall submit a project financial report (pro forma) along with the application for the project in order to evaluate the financial need for the additional incentive(s). At the cost of developer, the Town may retain a consultant to review the financial report. If the developer is a nonprofit organization, the Town may elect to pay the cost of the consultant upon approval by the Town Council (or Redevelopment Agency if the project is located in the Redevelopment Area). (Ord. #94-05, § 1)

32-74.10 Violation-Penalty. It is unlawful for any person, firm, corporation, partnership or other entity to violate any provision or fail to comply with any of the requirements of this section. A violation of any of the provisions or failing to comply with any of the requirements of this section shall constitute a misdemeanor; except that, notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this section may, at the discretion of the enforcing authority, be charged and prosecuted as an infraction. (Ord. #94-05, § 1)

32-74.11 Enforcement.

- a. The Town Manager is hereby designated the enforcing authority of this section.
- b. The provisions of this section shall apply to all agents, successors and assigns of a developer. No building permit or occupancy permit shall be issued, nor any development approval be granted, which does not meet the requirements of this section. The Chief Building Official may suspend or revoke any building permit or approval upon finding a violation of any provision of this section.
- c. In the event it is determined that rents in excess of those allowed by operation of this section have been charged to a tenant residing in a restricted occupancy rental unit, the Town may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the Town in the event the tenant cannot be located), any excess rent charges. (Ord. #94-05, § 1)

32-74.12 Appeals. Any person aggrieved by any action or determination of the Town Manager under this section may appeal such action or determination to the Town Council as provided for in the Municipal Code. (Ord. #94-05, § 1)