

## **ORDINANCE NO. 08-2017**

**AN ORDINANCE OF THE CITY OF FREMONT AMENDING VARIOUS CHAPTERS OF FREMONT MUNICIPAL CODE TITLE 18 (PLANNING AND ZONING) FOR CONFORMITY WITH STATE LAWS PERTAINING TO DENSITY BONUS, ACCESSORY DWELLING UNITS, AND MARIJUANA REGULATION AND FOR ENHANCEMENT AND CLARIFICATION OF EXISTING REGULATIONS RELATED TO BOTH DEVELOPMENT AND USE OF PROPERTY WITHIN THE CITY, AND ZONING MAP AMENDMENTS TO PROVIDE CONFORMITY WITH THE GENERAL PLAN COMMUNITY CHARACTER LAND USE MAPS (PLN2017-00244)**

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THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

**SECTION 1.**      FMC SECTION 18.25.1815, ADDED

Fremont Municipal Code Section 18.25.1815 is added to read as follows:

**Sec. 18.25.1815    Marijuana; and related terms.**

- (a) “Marijuana” shall have the same meaning as set forth in California Health and Safety Code Section 11018, as that statute may be amended from time to time.
- (b) “Marijuana activity” includes the use, possession, cultivation, manufacture, distribution, processing, storage, testing, labeling, transportation, delivery, sale, gifting, transfer, or exchange of marijuana, as well as any like activities relating to growing, processing, obtaining, or using marijuana.
- (c) “Marijuana delivery” shall have the same meaning as “delivery” as set forth in California Business and Professions Code Section 26001, subdivision (h), as that statute may be amended from time to time.
- (d) “Medical marijuana” means “medical cannabis,” as that term is defined in California Business and Professions Code Section 19300.5, subdivision (af), as that statute may be amended from time to time.
- (e) “Medical marijuana cultivation” shall have the same meaning as “cultivation” as set forth in California Business and Professions Code Section 19300.5, subdivision (k), as that statute may be amended from time to time.
- (f) “Medical marijuana delivery” shall have the same meaning as “delivery” as set forth in California Business and Professions Code Section 19300.5, subdivision (m), as that statute may be amended from time to time.
- (g) “Medical marijuana dispensary” shall have the same meaning as “dispensary” as set forth in California Business and Professions Code Section 19300.5, subdivision (n), as that

statute may be amended from time to time. A medical marijuana dispensary shall also include any facility or location, whether fixed or mobile, where medical marijuana is made available to, or distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5, *et seq.* A “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law: a clinic licensed pursuant to California Health and Safety Code Division 2, Chapter 1, a healthcare facility licensed pursuant to California Health and Safety Code Division 2, Chapter 2, a facility licensed pursuant to California Health and Safety Code Division 2, Chapter 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to California Health and Safety Code Division 2, Chapter 3.01, a residential care facility for the elderly licensed pursuant to California Health and Safety Code Division 2, Chapter 3.2, a residential hospice or a home health agency licensed pursuant to California Health and Safety Code Division 2, Chapter 8, as long as such use complies strictly with applicable law, including, but not limited to, California Health and Safety Code Section 11362.5, *et seq.*

**SECTION 2.** FMC SECTION 18.25.1872, REPEALED

Fremont Municipal Code Section 18.25.1872 is repealed.

*[Now addressed in proposed Section 18.25.1815-Marijuana and related terms]*

**SECTION 3.** FMC SECTION 18.25.1874, REPEALED

Fremont Municipal Code Section 18.25.1874 is repealed

*[Now addressed in proposed Section 18.25.1815- Marijuana and related terms]*

**SECTION 4.** FMC SECTION 18.25.1875, REPEALED

Fremont Municipal Code Section 18.25.1875 is repealed.

*[Now addressed in proposed Section 18.25.1815-Marijuana and related terms]*

**SECTION 5. FMC SECTION 18.50.090 AMENDED**

Fremont Municipal Code Section 18.50.090 (Table 18.50.090) is amended to read as follows:

*[All other portions of this section and table remain unchanged]*

Use	NAICS (2012)	I-S	I-T	I-G	Specific Use Regulations/ Notes
<b>AUTOMOTIVE AND TRANSPORTATION</b>					
Transportation, transit and ground passenger <sup>2</sup> and scenic and sightseeing, land <sup>2</sup>	485 and 4871				
Without storage of vehicles		Z	P	P	
With storage of vehicles in a corporation yard		Z	Z	P	

**SECTION 6. FMC SECTION 18.90.080 AMENDED**

Fremont Municipal Code Section 18.90.080 is amended to read as follows:

**Sec. 18.90.080 Uses within residential districts.**

- (a) Use Table. Table 18.90.080 sets forth those uses which are permitted, permitted with approval of a zoning administrator permit, permitted with approval of a conditional use permit, and not allowed in residential districts, and the type of approval each use requires. The following terms are used in Table 18.90.080:
  - (1) Permitted (“P”) uses are allowed subject to conformance to standards or conditions of this title.
  - (2) Conditional (“C”) uses may be permitted with a conditional use permit, provided all other requirements of this title are met.
  - (3) Zoning administrator (“Z”) uses may be permitted with a zoning administrator permit, provided all other requirements of this title are met.
  - (4) Accessory (“A”) uses are allowed when subordinate to or part of a principal use on the same lot and serve as a use incidental to such principal use.
  - (5) The symbol “--” indicates a use is prohibited within the zoning district.
- (b) Permitting Procedures. Permitting procedures for a conditional use permit and zoning administrator permit shall be as provided in Chapters 18.230 and 18.275, respectively.

**Table 18.90.080 Allowed Land Uses and Permit Requirements  
for Residential Zoning Districts**

*[Only the following items have been amended. All other parts of this table remain unchanged]*

Land Use	2012 NAICS <sup>2</sup>	R-1	R-2	R-3	R-G	Specific Use Regulations
Duet dwelling <sup>1</sup>		-	P	P/Z <sup>3</sup>	P/Z <sup>3</sup>	18.90.050(i) 18.90.070(c)
Duplex or two-family dwelling <sup>1</sup>		P on corner lots	P	P/Z <sup>3</sup>	P/Z <sup>3</sup>	18.90.050(i) 18.90.070(c)
Junior accessory dwelling units		A	A	A <sup>3</sup>	A <sup>3</sup>	18.190.005
Single-family dwelling <sup>1</sup>		P	P	P/Z <sup>3</sup>	P/Z <sup>3</sup>	18.090.050(i) 18.090.070(c)
Standard accessory dwelling units		A <sup>6</sup>	A <sup>6</sup>	A <sup>3,6</sup>	A <sup>3,6</sup>	18.190.005

<sup>1</sup> Term is defined in Chapter 18.25.

<sup>2</sup> Term is elaborated on in North American Industry Classification System (NAICS) Manual<sup>1</sup>.

<sup>3</sup> singlefamily and accessory dwelling units. See Sections 18.90.050(i) or 18.90.070(c) for single- and two-family home requirements. See Section 18.190.005 for accessory dwelling units, and subsection 18.190.005(b)(4)(B) for ADU limitations on larger multi-family zoned lots.

<sup>4</sup> Uses allowed in the city's neighborhood or office commercial districts can be permitted as long as the commercial use is located at the first story of a multifamily residential or live/work building three or more stories tall and located on an arterial or collector street.

<sup>5</sup> Up to a maximum of six persons.

<sup>6</sup> A ministerial design review permit may be required.

**SECTION 7. FMC SECTION 18.155.090 AMENDED**

Fremont Municipal Code Section 18.155.090 is amended to read as follows:

**Sec. 18.155.090 Establishment of affordable housing fees – Use.**

- (a) Affordable housing fees shall be set by city fee resolution or other action of the city council. Fees may be based on a fee per market-rate unit, fee per square foot, or any other reasonable basis. The city council may review the fees from time to time at its sole discretion and, based on that review, may adjust the fee amount within the range justified by the most recently adopted Nexus Study and shall not exceed the cost of mitigating the impact of market-rate housing on the need for affordable housing in the city. The affordable housing fee amounts set forth for projects deemed complete prior to May 7, 2015, shall be adjusted once each fiscal year by the community development director based on the annual percentage increase or decrease in the construction cost index; provided, that any increased adjustment does not exceed the amounts justified by the most recently adopted Nexus Study.
- (b) Affordable housing fees paid for fractional units pursuant to Section 18.155.030(a)(6) shall be equal to moderate income fee multiplied by the fraction of the affordable unit required multiplied by the average square footage of moderate income housing units multiplied by 22 detached (or 29 attached units).
- (c) All fees collected under this chapter shall be deposited into a separate account to be designated the city of Fremont affordable housing development fund.

- (d) A residential project that would result in demolition of existing residential units shall not be entitled to a fee credit for the demolished units and new units shall be assessed based upon their full square footage. Residential units that are retained shall not be charged a fee but will be charged for any expanded square footage.
- (e) The fees collected under this chapter and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the city through acquisition, construction, development assistance, rehabilitation, financing, or other methods, and for costs of administering these programs. A maximum of five percent of the fund may be used for administrative costs directly related to the provision of affordable housing financed by the fund. The housing shall be of a type, or made affordable at a cost or rent, for which there is a need in the city and which is not adequately supplied in the city by private housing development in the absence of public assistance and to the extent feasible shall be utilized to provide for low, very low, and extremely low income housing.

**SECTION 8. FMC CHAPTER 18.165 AMENDED**

Fremont Municipal Code Section Chapter 18.165 is amended to read as follows:

**Chapter 18.165  
DENSITY BONUS AND AFFORDABLE HOUSING INCENTIVES**

Sections:

- 18.165.010 Purpose and intent.
- 18.165.020 Definitions.
- 18.165.030 Calculation of residential density bonus and number of incentives and concessions.
- 18.165.040 Land donation.
- 18.165.045 Commercial development bonus.
- 18.165.050 Child care facilities.
- 18.165.060 Condominium conversions.
- 18.165.070 Affordability and development standards.
- 18.165.075 Modified parking standards.
- 18.165.080 Development standards modified as incentive or concession for housing developments.
- 18.165.090 Application requirements and review.
- 18.165.100 Density bonus housing agreement.

**Sec. 18.165.010 Purpose and intent.**

In accordance with Cal. Gov't Code §§ 65915, 65915.5, 65915.7, and 65917, this chapter is intended to provide incentives for the production of housing for very low income, lower income, and senior households and for the production of housing for moderate income households residing in condominium and planned development projects. In enacting this chapter, it is also the intent of the city of Fremont to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the city's housing element.

**Sec. 18.165.020 Definitions.**

Whenever the following terms are used in this chapter, they shall have the meaning established by this section:

“Affordable ownership cost” means a sales price resulting in projected average monthly housing payments during the first calendar year of a household’s occupancy, including interest, principal, mortgage insurance, property taxes, homeowners’ insurance, homeowners’ association dues, if any, and a reasonable allowance for utilities, property maintenance and repairs, not exceeding the following:

- (1) Moderate income units: 110 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 35 percent and divided by 12.
- (2) Lower income units: 70 percent of the area median income for households whose income exceeds the maximum limit for very low income households, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
- (3) Very low income units: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.

The city may determine sales prices of target units by any reasonable method so long as average monthly housing payments of eligible households do not exceed those permitted by this definition.

“Affordable rent” means monthly housing expenses, including all fees for housing services and a reasonable allowance for utilities, not exceeding the following:

- (1) Very low income units: 50 percent of the area median income, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.
- (2) Lower income units: 60 percent of the area median income for households whose income exceeds the maximum limit for very low income households, adjusted for assumed household size based on unit size, multiplied by 30 percent and divided by 12.

“Area median income” means area median income for Alameda County as published pursuant to California Code of Regulations, Title 25, § 6932, or successor provision.

“Assumed household size” means one person in a studio apartment, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom.

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

“Commercial development” means a construction project for non-residential uses.

“Commercial development bonus” means a modification of development standards mutually agreed upon by the city and a commercial developer that is provided to a commercial development eligible for such a bonus pursuant to Section 18.165.045. Examples of a commercial development bonus include an increase in floor area ratio, increased building height, or reduced parking.

“Common interest development” is as defined in Cal. Civ. Code § 4100.

“Density bonus” means a density increase over the otherwise allowable maximum residential density for a housing development or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.

“Density bonus housing agreement” means a recorded agreement between a developer and the city as described in Section 18.165.100 to ensure that the requirements of this chapter are satisfied. The agreement, among other things, shall establish the number of target units, their size, location, terms and conditions of affordability, and production schedule.

“Density bonus units” means those residential units granted pursuant to the provisions of this chapter that exceed the otherwise allowable maximum residential density for the development site.

“Development standard” means a site or construction condition that applies to a housing development pursuant to any ordinance, general plan element, specific plan, or other city condition, law, policy, resolution, or regulation. A “site and construction condition” is a development regulation or law that specifies the physical development of a site and buildings on the site in a housing development, including but not limited to a height limitation, a setback requirement, a floor area ratio, an on-site open space requirement, or a parking ratio.

“Housing development” means a construction project on contiguous lots that are the subject of one development application, consisting of five or more residential units, including single-family and multifamily units, for sale or for rent. For the purposes of this chapter, “housing development” also includes a subdivision or a common interest development consisting of five or more residential units or unimproved residential lots, a mixed-use development that includes five or more residential units or unimproved residential lots, the substantial rehabilitation and conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of at least five residential units.

“Incentives or concessions” means such regulatory concessions as listed in Section 18.165.080.

“Lower income household” means households whose income does not exceed the low income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Cal. Health & Safety Code § 50079.5.

“Major transit stop” means an existing site, or a site included in the regional transportation plan, that contains a rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes each with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A housing

development is considered to be within one-half mile of a major transit stop if all parcels within the housing development have no more than 25 percent of their area farther than one-half mile from the stop and if not more than 10 percent of the units or 100 units, whichever is less, in the housing development are farther than one-half mile from the stop.

“Market-rate units” means all units within a housing development except target units.

“Maximum residential density” means the maximum number of residential units allowed in a housing development by the city’s zoning ordinance and by the land use element of the general plan on the date that the application for the housing development is deemed complete. If the maximum density allowed by the zoning ordinance is inconsistent with the density allowed by the land use element of the general plan, the land use element density shall prevail.

“Moderate income household” means households whose income does not exceed the moderate income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Cal. Health & Safety Code § 50079.5.

“Partnered housing agreement” means an agreement approved by the city between a commercial developer and a housing developer identifying how the commercial development will provide housing available at affordable ownership cost or affordable rent. A partnered housing agreement may consist of the formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial developer and the housing developer are each partners, members, shareholders, or other participants, or a contract between the commercial developer and the housing developer for the development of both the commercial development and the housing development.

“Qualified resident” means senior citizens or other persons eligible to reside in a senior citizen housing development.

“Senior citizen housing development” means a senior citizen housing development with at least 35 dwelling units as defined in Cal. Civ. Code § 51.3 or a mobile home park that limits residency based on age requirements for older persons pursuant to Cal. Civ. Code § 798.76 or 799.5.

“Special needs housing” means any housing, including supportive housing, intended to benefit, in whole or in part, persons identified as having special needs relating to mental health; physical disabilities; developmental disabilities, including without limitation intellectual disability, cerebral palsy, epilepsy, and autism; and risk of homelessness, and housing intended to meet the housing needs of persons eligible for mental health services funded in whole or in part by the Mental Health Services Fund, created by Cal. Welf. & Inst. Code § 5890.

“Specific adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective and identified written public health or safety standards, policies, or conditions as they existed on the date that the application was deemed complete.

“Target unit” means a dwelling unit within a housing development which will be reserved for sale or rent, and is made available at an affordable rent or affordable ownership cost, to very low, lower, or moderate income households, or is a unit in a senior citizen housing development, or is intended to serve transitional foster youth, disabled veterans, or homeless persons, and which



qualifies the housing development for a density bonus and incentives pursuant to Section 18.165.030 or qualifies a commercial development for a commercial development bonus pursuant to Section 18.165.045.

“Unobstructed access” to a location means that a resident is able to access the location without encountering natural or constructed impediments.

“Very low income household” means households whose income does not exceed the very low income limits applicable to Alameda County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Cal. Health & Safety Code § 50105.

**Sec. 18.165.030 Calculation of residential density bonus and number of incentives and concessions.**

- (a) Subject to the findings included in Section 18.165.090, the city shall grant a 20 percent density bonus to a developer of a housing development who seeks a density bonus and agrees to construct at least one of the following and any additional replacement housing units required by subsection (d) of this section:
  - (1) Ten percent of the total units of the housing development as target units affordable to lower income households; or
  - (2) Five percent of the total units of the housing development as target units affordable to very low income households; or
  - (3) A senior citizen housing development. The density bonus for a senior citizen housing development is limited to 20 percent of the number of senior housing units.
- (b) Subject to the findings included in Section 18.165.090, the city shall grant a five percent density bonus to a developer of a housing development who seeks a density bonus and agrees to provide all of the following and any additional replacement housing units required by subsection (d) of this section:
  - (1) Ten percent of the total units in the housing development as target units for sale to moderate income households at an affordable sales price; and
  - (2) The housing development is a common interest development; and
  - (3) All of the dwelling units in the housing development are offered to the public for sale.
- (c) Subject to the findings included in Section 18.165.090, the city shall grant a density bonus of 20 percent of the type of units listed in subparagraph (1) below to a developer of a housing development who seeks a density bonus and agrees to provide all of the following and any additional replacement housing units required by subsection (d) of this section:
  - (1) Ten percent of the total units in the housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code; disabled veterans, as defined in

Section 18541 of the Government Code, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 USC Section. 11301 *et seq.*; and

- (2) The units described in subparagraph (1) above are subject to a recorded restriction requiring that the units remain affordable to very low income households for 55 years.
- (d) Replacement housing shall be provided on a site which meets both of the following conditions:
  - (1) Rental housing is now located or was located on the site at any time in the five-year period preceding the date of submittal of the density bonus application; and
  - (2) The rental housing is or was, during that five-year period:
    - (A) Subject to a recorded covenant, ordinance, or law restricting rents to levels affordable to very low and lower income households;
    - (B) Subject to any form of public rent or price control; or
    - (C) Occupied by very low or lower income households.

A housing development subject to this subsection (d) is not eligible for a density bonus, incentive, concession, waiver, or modified parking provided by this chapter unless the proposed housing development contains one of the following, whichever results in a greater number of affordable units:

- (3) The percentage of target units specified in subsection (a), (b), or (c) of this section; or
- (4) The replacement affordable units specified in Cal. Gov't Code §§ 65915(c)(3)(B) and (C).
- (e) The density bonus for which the housing development is eligible shall increase if the percentage of very low income, lower income, or moderate income target units is increased, as follows:
  - (1) For each one percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by one and one-half percent up to a maximum of 35 percent.
  - (2) For each one percent increase above five percent in the percentage of units affordable to very low income households, the density bonus shall be increased by two and one-half percent up to a maximum of 35 percent.
  - (3) For each one percent increase above 10 percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one percent up to a maximum of 35 percent.

When calculating the maximum residential density and the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

- (f) The density bonus units shall not be included when determining the number of target units required to qualify for a density bonus. When calculating the required number of target units, any calculations resulting in fractional units shall be rounded to the next larger integer.
- (g) The developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsections (a) through (d) of this section. Regardless of the number of target units, no housing development may be entitled to a density bonus of more than 35 percent.
- (h) Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low income target units, lower income target units, or moderate income target units, the project’s status as a senior citizen housing development, or the project’s provision of housing for transitional foster youth, disabled veterans, or homeless persons. Density bonuses from more than one category may not be combined.
- (i) Subject to the findings included in Section 18.165.090, when a developer seeks a density bonus, the city shall grant incentives or concessions listed in Section 18.165.080 as follows:
  - (1) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least five percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.
  - (2) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.
  - (3) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.
- (j) In accordance with state law, neither the granting of a concession or incentive nor the granting of a density bonus shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.
- (k) The following tables summarize this information:

**Density Bonus Summary Table**

<b>Target Group</b>	<b>Minimum % Target Units</b>	<b>Bonus Granted</b>	<b>Additional Bonus for Each 1% Increase in</b>	<b>% Target Units Required for Maximum</b>

			<b>Target Units</b>	<b>35% Bonus</b>
Very Low Income	5%	20%	2.5%	11%
Low Income	10%	20%	1.5%	20%
Moderate Income (for-sale common interest development only)	10%	5%	1%	40%
Senior Citizen Housing Development	100%	20% of senior units only	–	–
Units Designated for Transitional Foster Youth, Disabled Veterans, or Homeless Persons	10% (Designated units must also be affordable to very low income households)	20% of designated units only		

Note: No density bonus may be granted unless replacement affordable units are provided as required in subsection (d) of this section.

### Incentives/Concessions Summary Table

<b>Target Group</b>	<b>Target Units</b>		
Very Low Income	5%	10%	15%
Low Income	10%	20%	30%
Moderate Income (for-sale common interest development only)	10%	20%	30%
Maximum Incentive(s)/Concession(s)	1	2	3

Notes:  
1. Incentives may be selected from only one category (very low, low, or moderate).  
2. No incentives are available for land donation or for a senior citizen housing development (if not affordable).  
3. Condominium conversions and day care centers may have one incentive or a density bonus at the city's option, but not both.  
4. No incentives or concessions may be granted unless replacement affordable units are provided as required in subsection (d) of this section.

#### **Sec. 18.165.040 Land donation.**

- (a) When a developer of a housing development donates land to the city as provided in this section and meets the requirements of Section 18.165.030(d), the developer shall be entitled to a 15 percent increase above the otherwise allowable maximum residential density for the housing development. For each one percent increase above the minimum 10 percent land donation described in subsection (b)(2) of this section, the density bonus

shall be increased by one percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density allowed by Section 18.165.030, up to a maximum combined density bonus of 35 percent if a developer seeks both the increase required pursuant to this section and Section 18.165.030. When calculating the allowable maximum residential density and the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded to the next larger integer.

- (b) A housing development shall be eligible for the density bonus described in this section if the city makes all of the following findings:
- (1) The developer will donate and transfer the land no later than the date of approval of the final subdivision map, parcel map, application for the housing development, or first building permit, if no map is required.
  - (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount equal to at least 10 percent of the number of residential units of the proposed development, or will permit construction of a greater percentage of units if proposed by the developer.
  - (3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is zoned with appropriate standards to allow development at a density of at least 30 units per acre, and is now or at the time of construction will be served by adequate public facilities and infrastructure. No later than the date of approval of the final subdivision map, parcel map, application for the housing development, or first building permit, if no map is required, the transferred land will have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land.
  - (4) The transferred land and the very low income units constructed on the land will be subject to a deed restriction ensuring continued affordability of the units consistent with this chapter, which restriction will be recorded on the property at the time of transfer.
  - (5) The land will be transferred to the city, other public agency, or to a housing developer approved by the city. The city reserves the right to require the developer to identify a developer of the very low income units and to require that the land be transferred to that developer.
  - (6) The transferred land is within the boundary of the proposed housing development. The transferred land may be located within one-quarter mile of the boundary of the proposed housing development; provided, that the city additionally makes all of the findings included in Section 18.155.080(b).
  - (7) A proposed source of funding for the very low income units shall be identified no later than the date of approval of the final map, parcel map, application for the housing development, or first building permit, if no map is required.

**Sec. 18.165.045 Commercial development bonus.**

- (a) When a developer proposes to construct a commercial development and has entered into a partnered housing agreement approved by the city, the city shall grant a commercial development bonus mutually agreed upon by the developer and the city. The commercial development bonus shall not include a reduction or waiver of fees imposed on the commercial development to provide for affordable housing.
- (b) The partnered housing agreement shall include all of the following provisions:
  - (1) The housing development shall be located either on the site of the commercial development or on a site within the city that is within one-half mile of a major transit stop and is located in close proximity to public amenities, including schools and employment centers.
  - (2) At least 30 percent of the total units in the housing development shall be made available at affordable ownership cost or affordable rent for low-income households, or at least 15 percent of the total units in the housing development shall be made available at affordable ownership cost or affordable rent for very low-income households.
  - (3) The commercial developer must agree either to directly build the target units; donate a site consistent with subparagraph (1) above for the target units; or make a cash payment to the housing developer for the target units.
- (c) Any approved partnered housing agreement shall be described in the city's housing element annual report as required by Government Code Section 65915.7(k).

**Sec. 18.165.050 Child care facilities.**

- (a) When a developer proposes to construct a housing development that includes target units as specified in Section 18.165.030(a) through (d) and includes a child care facility that will be located on the premises of, as part of, or adjacent to the housing development, the city shall grant either of the following if requested by the developer:
  - (1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
  - (2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (b) A housing development shall be eligible for the density bonus or concession described in this section if the city makes all of the following findings:
  - (1) The child care facility will remain in operation for a period of time that is as long as or longer than the period of time during which the target units are required to remain affordable pursuant to Section 18.165.070.

- (2) Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, lower income households, or moderate income households.
- (c) Notwithstanding any requirement of this section, the city shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community already has adequate child care facilities.

**Sec. 18.165.060 Condominium conversions.**

- (a) The city shall grant either a density bonus or other incentives of equivalent financial value if the applicant for a condominium conversion agrees to provide 33 percent of the total units of the proposed condominium project as target units affordable to lower or moderate income households, or to provide 15 percent of the total units in the condominium conversion project as target units affordable to lower income households, and to provide any replacement affordable units required by Section 18.165.030(d). All such target units shall remain affordable for the period specified in Section 18.165.070(b).
- (b) For purposes of this section, a “density bonus” means an increase in units of 25 percent over the number of apartments to be provided within the existing structure or structures proposed for conversion. “Other incentives of equivalent financial value” shall not be construed to require the city to provide a cash transfer payment or other monetary compensation of any type but may include, at the city’s discretion, modification of requirements that the city might otherwise apply as conditions of approval.
- (c) No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this chapter or Cal. Gov’t Code § 65915.
- (d) Nothing in this section shall be construed to require the city to approve a condominium conversion.

**Sec. 18.165.070 Affordability and development standards.**

- (a) Target units shall be constructed concurrently with market-rate units or pursuant to a schedule included in the density bonus housing agreement. No temporary or permanent certificate of occupancy for any new market-rate unit in a housing development or for commercial space in a commercial development shall be issued until permanent certificates of occupancy have been issued for the required target units unless explicitly permitted by the density bonus housing agreement or partnered housing agreement.
- (b) Target units offered for rent to lower income and very low income households shall be made available for rent at an affordable rent. Target units offered for sale to very low, lower, or moderate income households shall be sold at an affordable ownership cost. All

target units offered for rent shall remain restricted and affordable to the designated income group for a minimum period of 55 years. All target units offered for sale shall remain restricted and affordable to the designated income group for a minimum period of 30 years. A longer period of time may be specified if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the housing development.

- (c) Provisions for the continued affordability of target units shall be consistent with those specified in Section 18.155.070.
- (d) Target units shall be built on site, unless off-site construction is approved pursuant to Section 18.165.040 or Section 18.165.045, and shall be dispersed within the housing development. The number of bedrooms of the target units shall be equivalent to the bedroom mix of the market-rate units in the housing development, except that the developer may include a higher proportion of target units with more bedrooms. The design and appearance of the target units shall be compatible with the design of the total housing development. Housing developments and commercial developments shall comply with all applicable development standards, except those which may be modified as provided by this chapter.

**Sec. 18.165.075 Modified parking standards.**

- (a) If a housing development is eligible for a density bonus, upon the request of the developer, the city shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:
  - (1) Zero to one bedroom: one on-site parking space.
  - (2) Two to three bedrooms: two on-site parking spaces.
  - (3) Four and more bedrooms: two and one-half parking spaces.
- (b) For certain other housing developments that are eligible for a density bonus, upon the request of the developer, the city shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the ratios shown in the following table. However, if the city, at its cost, has conducted an areawide or citywide parking study in the last seven years, then the city may find, based on substantial evidence, that a higher parking ratio is required than shown in the following table. In no event may the required parking be greater than the ratio provided in subsection (a) of this section. The parking study must conform to the requirements of Cal. Gov't Code § 65915(p)(7).



Type of Development	Maximum Number of Required Off-Street Parking Spaces
Rental or ownership housing development with: <ol style="list-style-type: none"> <li>1. At least 11 percent very low income or 20 percent lower income units; and</li> <li>2. Within one-half mile of a major transit stop; and</li> <li>3. Unobstructed access to the major transit stop.</li> </ol>	0.5 per bedroom
Rental housing development with: <ol style="list-style-type: none"> <li>1. All units affordable to lower income households except manager’s unit(s); and</li> <li>2. Within one-half mile of a major transit stop; and</li> <li>3. Unobstructed access to the major transit stop.</li> </ol>	0.5 per unit
Senior citizen rental housing development with: <ol style="list-style-type: none"> <li>1. All units affordable to lower income households except manager’s unit(s); and either</li> <li>2. Has paratransit service; or</li> <li>3. Is within one-half mile of fixed bus route service that operates eight times per day, with unobstructed access to that service.</li> </ol>	0.5 per unit
Special needs rental housing development with: <ol style="list-style-type: none"> <li>1. All units affordable to lower income households except manager’s unit(s); and either</li> <li>2. Has paratransit service; or</li> <li>3. Is within one-half mile of fixed bus route service that operates eight times per day, with unobstructed access to that service.</li> </ol>	0.3 per unit

(c) If the total number of parking spaces required for a development by this section is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a development may provide “on-site parking” through tandem parking or uncovered parking, but not through on-street parking.

**Sec. 18.165.080 Development standards modified as incentive or concession for housing developments.**

(a) Incentives or concessions that may be requested pursuant to Sections 18.165.030(i) and 18.165.050(a) may include the following:

- (1) A reduction of site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards provided in Cal. Health & Safety Code Division 13, Part 2.5 (commencing with Section 18901) and which result in identifiable and actual cost reductions to provide for affordable ownership costs or affordable rents, including, but not limited to:
    - (A) Reduced minimum lot size and/or dimension.
    - (B) Reduced minimum lot setback.
    - (C) Reduced minimum outdoor and/or private outdoor living area.
    - (D) Increased maximum lot coverage.
    - (E) Increased maximum building height and/or stories.
    - (F) Reduced minimum building separation requirement.
    - (G) Reduced street standard, such as reduced minimum street width.
  - (2) Approval of mixed-use development in conjunction with the housing development if nonresidential land uses will reduce the cost of the housing development and if the city finds that the proposed nonresidential uses are compatible with the housing development and with existing or planned development in the area where the proposed housing development will be located.
  - (3) Incentives for affordable units listed in Section 18.155.040(a).
  - (4) Modifications of those development standards included in Section 18.165.070(d).
  - (5) Deferred development impact fees (e.g., capital facilities, park land in lieu, park facilities, fire, or traffic impact fees).
  - (6) Other regulatory incentives or concessions proposed by the developer or the city which result in identifiable and actual cost reductions to provide for affordable ownership costs or affordable rents.
- (b) Developers may seek a waiver or modification of any development standard that will physically preclude the construction of a housing development meeting the criteria of Section 18.165.030(a) through (d) at the density or with the concessions or incentives permitted by this chapter. The applicant shall bear the burden of demonstrating that the development standards that are requested to be waived will have the effect of physically precluding the construction of the housing development with the density bonus and incentives.
  - (c) Nothing in this section requires the provision of direct financial incentives for the housing development, including but not limited to the provision of financial subsidies,

publicly owned land, fee waivers, or waiver of dedication requirements. The city, at its sole discretion, may choose to provide such direct financial incentives.

**Sec. 18.165.090 Application requirements and review.**

- (a) An application for a density bonus, incentive, concession, waiver, modification, modified parking standard, or commercial development bonus pursuant to this chapter shall be submitted with the first application for approval of a housing development or commercial development and processed concurrently with all other applications required for the housing development or commercial development. An applicant shall be informed whether the application is complete consistent with Government Code Section 65943. The application shall be submitted on a form prescribed by the city and shall include at least the following information:
- (1) Site plan showing total number of units, number and location of target units, and number and location of proposed density bonus units.
  - (2) Summary table showing the maximum number of units permitted by the zoning and general plan excluding any density bonus units, proposed target units by income level, proposed bonus percentage, number of bonus units proposed, and total number of dwelling units proposed on the site.
  - (3) Tenure (rental versus for-sale) of target units and proposals for ensuring affordability.
  - (4) A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size, if known, of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size, if known, of residents occupying dwelling units when the site contained the maximum number of dwelling units.
  - (5) Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.
  - (6) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards.
  - (7) For all incentives and concessions except mixed-use development, to establish eligibility for the requested incentives and concessions, the application shall include evidence that the requested incentives and concessions result in identifiable and actual cost reductions, including the actual cost reduction achieved through the incentive, and evidence that the cost reduction allows the applicant to provide affordable rents or affordable ownership costs.
  - (8) If a mixed-use building or project is proposed as an incentive, the applicant shall provide evidence that nonresidential land uses will reduce the cost of the residential

project, and that the nonresidential land uses are compatible with the residential project and the existing or planned surrounding development.

- (9) For waivers or modifications of development standards, the application shall provide evidence that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus and incentives requested.
  - (10) If a parking reduction is requested, a table showing parking required by the zoning ordinance and proposed parking. If a parking reduction provided by Section 18.165.075(b) is requested, evidence that the project is eligible for the requested parking reduction.
  - (11) If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 18.165.040(b) can be made.
  - (12) If a commercial development bonus is requested for a commercial development, the application shall include the proposed partnered housing agreement, the proposed commercial development bonus, and evidence that each of the standards included in Section 18.165.045(b) has been met.
  - (13) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in Section 18.165.050(b) can be made.
  - (14) If a density bonus or incentive is requested for a condominium conversion, the application shall provide evidence that all of the requirements found in Section 18.165.060 can be met.
- (b) An application for a density bonus, incentive, concession, waiver, modification, modified parking standard, or commercial development bonus for a housing development or a commercial development pursuant to this chapter shall be considered by and acted upon by the approval body with authority to approve the housing development or commercial development within the timelines prescribed by Government Code Sections 65950 *et seq.* Any decision regarding a density bonus, incentive, concession, waiver, modification, modified parking standard or commercial density bonus may be appealed to the planning commission and from the planning commission to the city council. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.
- (c) Before approving an application for a density bonus, incentive, concession, waiver, modification, or commercial development bonus, the approval body shall make the following findings, as applicable:
- (1) A finding that the housing development is eligible for the density bonus and any incentives, modified parking, or waivers requested and includes any replacement

affordable units required by Section 18.165.030(d).

- (2) A finding that any requested incentive will result in identifiable and actual cost reductions to provide for affordable rents or affordable ownership costs based upon the documentation provided by the applicant.
  - (3) If the density bonus is based all or in part on donation of land, the findings included in Section 18.165.040(b).
  - (4) If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the findings included in Section 18.165.050(b).
  - (5) If the incentive or concession includes mixed-use development, the findings included in Section 18.165.080(a)(2).
  - (6) If a waiver or modification is requested, a finding that the development standards for which the waiver is requested would have the effect of physically precluding the construction of the housing development with the density bonus and incentives permitted.
  - (7) If the density bonus, incentive, or concession is based all or in part on a condominium conversion, a finding that the project complies with the requirements of Section 18.165.060.
  - (8) If a commercial development bonus is requested, a finding that the project complies with the requirements of Section 18.165.045, that the city has approved the partnered housing agreement, and that the bonus has been mutually agreed upon by the city and the commercial developer.
- (d) If a request for a concession or incentive is otherwise consistent with this chapter, the approval body may deny a concession or incentive only if it makes a written finding, based upon substantial evidence, of one of the following:
- (1) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable rents or affordable ownership costs.
  - (2) The concession or incentive would have a specific adverse impact upon public health or safety or the physical environment or on any real property that is listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower and moderate income households.
  - (3) The concession or incentive is contrary to state or federal law.
- (e) If a request for a waiver or modification is otherwise consistent with this chapter, the approval body may deny a waiver or modification only if it makes a written finding, based upon substantial evidence, of one of the following:

- (1) The waiver or modification would have a specific adverse impact upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to lower and moderate income households.
  - (2) The waiver or modification would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
  - (3) The waiver or modification is contrary to state or federal law, which may include a finding that the development standards for which the waiver is requested would not have the effect of physically precluding the construction of the housing development with the density bonus and incentives permitted.
- (f) If a density bonus or concession is based on the provision of child care facilities, the approval body may deny the bonus or concession if it finds, based on substantial evidence, that the city already has adequate child care facilities.

**Sec. 18.165.100 Density bonus housing agreement.**

- (a) If any density bonus, incentive, concession, waiver, modified parking, or commercial development bonus is approved pursuant to this chapter for a housing development, a density bonus housing agreement shall be made a condition of the discretionary planning permits. The density bonus housing agreement shall be a legally binding agreement between the applicant and the city to ensure that the requirements of this chapter are satisfied and shall be binding on all future owners and successors in interest. The density bonus housing agreement may be combined with the affordable housing agreement and other documents required by Chapter 18.155. The executed density bonus housing agreement shall be approved by the city attorney and shall be recorded against the housing development or the commercial development, as applicable, prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of any building permit for the housing development or commercial development.
- (b) The density bonus housing agreement for a housing development or commercial development shall include but not be limited to the following:
  - (1) The total number of units approved for the housing development, the number, location, and level of affordability of target units, and the number of density bonus units.
  - (2) Standards for determining affordable rent or affordable ownership cost for the target units.
  - (3) The location, unit size in square feet, and number of bedrooms of target units.
  - (4) Provisions to ensure affordability in accordance with Sections 18.165.070(b) and (c).
  - (5) A schedule for completion and occupancy of target units in relation to construction of market-rate units or construction of the commercial development, as applicable.

- (6) A description of any incentives, concessions, waivers, reductions, modified parking, or commercial development bonus being provided by the city.
  - (7) A description of remedies for breach of the agreement by either party. The city may identify tenants or qualified purchasers as third party beneficiaries under the agreement.
  - (8) Procedures for qualifying tenants and prospective purchasers of target units.
  - (9) Financing of ongoing administrative and monitoring costs.
  - (10) Other provisions to ensure implementation and compliance with this chapter.
- (c) In the case of for-sale housing developments, the density bonus housing agreement shall include the following conditions governing the sale and use of target units during the applicable use restriction period:
- (1) Target units shall be owner-occupied by eligible very low, lower, or moderate income households, or by qualified residents in the case of senior citizen housing developments.
  - (2) The purchaser of each target unit shall execute an instrument approved by the city and to be recorded against the parcel, including such provisions as the city may require to ensure continued compliance with this chapter.
- (d) In the case of rental housing developments, the density bonus housing agreement shall provide for the following:
- (1) Procedures for establishing affordable rent, filling vacancies, and maintaining target units for eligible tenants;
  - (2) Provisions requiring verification of household incomes;
  - (3) Provisions requiring maintenance of records to demonstrate compliance with this subsection; and
  - (4) The developer's agreement that the restrictions on rents are consistent with the Costa-Hawkins Act (Cal. Civ. Code §§ 1954.51 through 1954.535).
- (e) Density bonus housing agreements for child care facilities and land dedication shall ensure continued compliance with all conditions included in Sections 18.165.050 and 18.165.040, respectively.

**SECTION 9.** FMC SECTION 18.183.040, AMENDED

Fremont Municipal Code Section 18.183.040 is amended to read as follows:

**Sec. 18.183.040 Parking regulations for certain town centers.**

- (a) Purpose. The city recognizes the standard parking requirements are not always appropriate for areas historically developed in a “Main Street” pattern and can act as a constraint to revitalization if applied strictly. This section is intended to provide alternatives to certain parking standards for specific areas within the Centerville, Irvington, and Mission San Jose town centers.
- (b) Applicability. This section shall be applicable to commercial uses (excluding those commercial uses within shopping centers: wherein the primary access to a use is from a Main Street corridor as identified on the General Plan Community Character Element-Corridor Place Types diagram). Where provisions contained in this section are inconsistent with parking provisions of this chapter, this section shall prevail.
- (c) Waiver of Parking Requirements – Minor Additions or Intensification of Uses. Parking spaces requirements required for minor building additions or minor changes in building use shall be waived.

A minor building addition is one that would, but for this waiver, require the provision of additional parking spaces comprising less than 10 percent of the number of spaces required for the existing building prior to expansion. A minor change in use is one that would, but for this waiver, require additional parking spaces comprising less than 10 percent of the number of spaces required for the use prior to the change.

For the purpose of applying this subsection on minor additions or minor use changes, the parking required for the existing building or prior use shall be credited to the existing building or prior use whether or not the parking has in fact been provided. This waiver of parking requirement shall only be granted once for a property.

- (d) Waiver of Parking Space Requirements – Major Additions to Existing Buildings or New Construction – Zoning Administrator and Planning Commission as Approving Bodies. The zoning administrator may approve reduction or elimination of parking spaces otherwise required for major expansion or change of use of existing building uses or construction of new buildings; provided, that he/she finds that parking has been provided on site and off site within 400 feet of the subject property to the maximum extent feasible and:
  - (1) There is sufficient on-street parking to accommodate the vehicles used by employees and customers of the business seeking the reduced parking requirement approval; and
  - (2) The reduced parking requirement will not be detrimental to property within 300 feet of the business seeking the reduction; and, if applicable
  - (3) The reduction or elimination of parking required for the use change or building expansion or new construction implements, to the extent applicable or desirable, specific side and front yard objectives of the design guidelines adopted for the area.



- (4) In no instance can the zoning administrator approve parking reductions where the additional parking otherwise required by this title would exceed 25 percent of the space already provided. Reductions in cases where additional parking otherwise required would exceed 25 percent of the spaces already provided require approval by the planning commission. The planning commission shall make findings established in this section before approving such reduced parking.

In applying this subsection to major additions, major use changes and new buildings, determination of the extent of any reduction of parking shall be based on the best information available as to the parking requirements for the last building use to occupy the lot. Also, the parking required for the existing building or prior use shall be credited to the existing building or prior use whether or not the parking has in fact been provided.

**SECTION 10.** FMC SECTION 18.190.005, AMENDED

Fremont Municipal Code Subsections 18.190.005(b)(4)(B) and 18.190.005(b)(8)(B) are amended to read as follows:

*[First paragraph through subsection 18.190.005 (b)(4)(A) remain unchanged]*

**Sec. 18.190.005 Accessory dwelling units.**

- (B) A JADU is permitted on any sized lot as long as the lot is developed with only one single-family home, however, a SADU shall not be allowed on a lot greater than 7,500 square feet located in the R-G district or on a lot greater than 6,000 square feet located in the R-3 district. The purpose of this limitation is to encourage the use of such sites for multifamily housing, rather than low density single-family homes. On lots of lesser size, a maximum of one ADU is permitted in conjunction with a principal residence.

*[Subsection 18.190.005(b)(4)(C) through 18.190.005(b)(8)(A) remain unchanged]*

- (B) ADUs shall not be held to a higher standard than the principal residence for fire sprinklers. Fire sprinklers shall only be required for an equivalent addition or modification of space on a residential property not associated with an ADU.

*[Remainder of this section remains unchanged]*

**SECTION 11.** FMC SECTIONS 18.190.095, 18.190.098, AND 18.190.100 REPEALED

Fremont Municipal Code Sections 18.190.095, 18.190.098, and 18.190.100 are repealed.

*[See Section 18.190.307 below for replacement language.]*

**SECTION 12.** FMC SECTION 18.190.300, AMENDED

Fremont Municipal Code Subsection 18.190.300 is amended to read as follows:

**Sec. 18.190.300 Mailboxes.**

Mailboxes shall be placed in accordance with United States Postal Service standards. All mailboxes installed after July 6, 2017 shall contain a functional lock that deters mail theft.

**SECTION 13. FMC SECTION 18.190.307, ADDED**

Fremont Municipal Code Section 18.190.307 is added to read as follows:

*[Replaces Sections 18,190.095, 18.090.098, and 18.190.100]*

**Sec 18.190.307 Marijuana activities.**

- (a) Marijuana activities, as defined in Section 18.25.1815 (b), including, without limitation, medical marijuana dispensaries as defined in Section 18.25.1815(g), are prohibited in all zones, and no use permit of any type shall be issued therefor.
- (b) All marijuana delivery and medical marijuana delivery, as those terms are defined in Section 18.25.1815 (c) and (f), is subject to the ban stated in subsection (a) of this section. Medical marijuana delivery shall not be deemed a misdemeanor, infraction, or crime of any kind, but shall be subject to civil enforcement remedies available by law, at the discretion of the city.
- (c) Notwithstanding the ban stated in subsection (a) of this section:
  - (1) Transportation of marijuana through the city is not subject to the ban stated in subsection (a) of this section to the limited extent authorized by California Business and Professions Code Sections 19338, subdivision (b), and 26080, subdivision (b).
  - (2) Subject to subsection (c)(4) of this section, activities authorized under California Health and Safety Code Section 11362.1 are permitted to the limited extent so authorized.
  - (3) Possession of medical marijuana is permitted to the limited extent that such possession is not subject to criminal prosecution under state law pursuant to California Health and Safety Code Section 11362.5.
  - (4) Cultivation of up to six marijuana plants per residence is permitted to the limited extent authorized under California Health and Safety Code Sections 11362.1 and 11362.2, subject to the following restrictions:
    - (A) Personal Use Cultivation. An individual who may cultivate marijuana for personal use pursuant to state law (“qualified person”), shall be allowed to cultivate marijuana only within his/her personal residence or in an attached garage or other fully enclosed and locked accessory structure located entirely on property owned or legally possessed by him or her. No outdoor cultivation is allowed within the

city limits.

- (B) Area. In any residence, the marijuana cultivation area shall not exceed thirty-two (32) square feet measured by the canopy, nor exceed ten (10) linear feet in height. This limit applies regardless of the number of individuals residing in the residence. The cultivation area shall be a single designated area.
- (C) Lighting. Lighting for marijuana cultivation shall not exceed a total of 1,200 watts, or otherwise pose a fire or safety hazard.
- (D) Building Code Requirements. Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building, fire, plumbing, and electrical codes, in addition to all applicable zoning codes, including lot coverage, set back, height, and parking requirements.
- (E) Gas Products. The use of gas products, including but not limited to carbon dioxide and butane, for marijuana cultivation or processing is prohibited.
- (F) Evidence of Cultivation. From outside the building wherein cultivation occurs, there shall be no exterior evidence of marijuana cultivation occurring on the site.
- (G) Residence. The qualified person shall reside at the residence wherein the marijuana cultivation occurs.
- (H) Cultivation Elsewhere in the City. The qualified person shall not participate in cultivation in any other location within the city.
- (I) Incidental Use. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and marijuana cultivation shall be limited to an incidental use of the residence.
- (J) Ventilation. The marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from cultivation are not detectable beyond the residence (or property line for detached single family residences), and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence. This shall include at a minimum, a system meeting the requirements of the current adopted edition of the California Building Standards Code, including California Building Code Section 1203.5 (Natural Ventilation) and Mechanical Code Section 402.3 (Mechanical Ventilation) or the equivalent(s) thereof.
- (K) Use and Storage of Chemicals. For the protection of local groundwater resources and indoor air quality, and to avoid disposal of harmful substances into sewers or septic systems, no chemical shall be used for marijuana cultivation that contains any substance on the list prepared pursuant to Health and Safety Code Section 25249.8; provided that any chemical specifically approved by the California Department of Pesticide Regulation for indoor use on marijuana may be used in amounts prescribed by the Department. No chemical used for marijuana

cultivation shall be stored in a manner visible from neighboring residences or to individuals located outside the property line or in the public right-of-way.

- (L) Nuisance. The marijuana cultivation area shall not adversely affect the health or safety of nearby residents by creating unreasonable dust, glare, heat, noise, noxious gasses, odors, traffic, vibrations, or similar impacts. Nor shall marijuana cultivation be hazardous due to the use or storage of materials, processes, products, or wastes, or from any actions incidental or related to the cultivation.
  - (M) Property Owner Authorization. For rental property, the lessee shall notify the property owner or property manager or management company of the cultivation, and no marijuana cultivation is permitted that would violate any lease term.
  - (N) Additional Requirements for Garages and Accessory Buildings. The following additional requirements shall apply for personal use cultivation that occurs in any garage or other accessory building (“structure”): the structure shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and shall be entirely opaque from all sides, including the top. The structure shall include a fully permitted burglar alarm monitored by an alarm company or private security company. The structure shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through the door.
  - (O) Registration. The police chief shall establish procedures for registering the cultivation of marijuana within the city limits, and shall charge a fee in an amount set by resolution of the city council. The registration procedures shall be posted on the police department’s official website once established, and thereafter no person shall commence or continue to cultivate marijuana within the city limits without first registering the site of the cultivation pursuant to registration procedures.
- (5) Cultivation in excess of what is permitted above under subsection (c)(4) of this section is prohibited in all zones, and any violation of the ban shall be subject to administrative, civil, and criminal enforcement remedies available by law, at the discretion of the city. Notwithstanding the foregoing, any medical marijuana cultivation in excess of what is permitted above under subsection (c)(4) of this section shall be a public nuisance, but shall not otherwise be deemed a misdemeanor, infraction, or crime of any kind to the limited extent that such cultivation is not subject to criminal prosecution under state law pursuant to California Health and Safety Code Section 11362.5.

SECTION 14. FMC SECTION 18.190.330, AMENDED

Fremont Municipal Code Section 18.190.330 is amended to read as follows:

**Sec. 18.190.330 Mini-warehouses for household goods.**

The following standards shall apply to mini-warehouses, as distinguished from general

warehouse uses:

- (a) Parking.
  - (1) Two spaces for manager’s residence.
  - (2) Five spaces to be located at project office.
  - (3) Loading and unloading may occur on driveways adjacent to storage bays.
- (b) Fencing. A six-foot-high masonry wall is required along rear and side property lines adjacent to areas shown as residential on the general plan. A six-foot landscape strip along said wall shall be required when structures in excess of one story are provided.
- (c) Uses. Mini-warehouses shall be limited to dead storage use only. No other activities or uses shall be permitted. All storage uses shall occur within enclosed buildings.
- (d) Caretaker Quarters. Each mini-warehouse facility shall include a caretaker quarters.
- (e) Lighting. All lights shall be shielded to direct light into the mini-storage area and away from adjacent property, but may be of sufficient intensity to discourage criminal activity.

**SECTION 15. FMC SECTION 18.193.550, AMENDED**

Fremont Municipal Code Section 18.193.550 is amended to read as follows:

**Sec 18.193.550 Permissible sign types and corresponding permit type.**

*[Only the “Walls and Windows” provision of the City Center and Downtown Land Use Category in Table 18.193.550 are being amended. All other portions of this Section and Table remain unchanged.]*

General Plan Land Use Designation (Location)	Building Mounted Signs	
	Basic Permittable Area (BPA)	Walls and Windows
City Center and Downtown <sup>2</sup>	1.3 x BF Max 200 sq. ft.	P only halo or external illumination

**SECTION 16. ZONING MAPS AMENDED**

The Zoning Maps of the City of Fremont, codified as Fremont Municipal Code Title 18 (Planning and Zoning), Chapter 18.35 (Zoning Maps), Section 18.35.010, are hereby amended by rezoning various properties to coincide with the Historic Overlay boundaries as shown in the General Plan Community Plans Element as more particularly shown on the PLN2017-00244 Rezoning Map attached hereto and incorporated herein as Attachment 1.

**SECTION 17. CEQA**

The City Council finds, based on its own independent judgment, that the proposed amendments to the Fremont Municipal Code are exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) in that the proposed amendments are not a project which has the potential for causing a significant effect on the environment. A notice of Exemption will be filed with the County Clerk.

SECTION 18. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Fremont hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 19. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

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SECTION 20. PUBLICATION AND POSTING

The City Clerk has prepared and published at least five days before the date of adoption a summary of this ordinance once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary to be published again with the names of those City Council members voting for and against the ordinance and shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

\* \* \*

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the 16<sup>th</sup> day of May, 2017, and finally adopted at a regular meeting of the City Council held on the 6<sup>th</sup> day of June, 2017, by the following vote:

AYES:	Mayor Mei; Vice Mayor Jones; Councilmembers Bacon, Salwan and Bonaccorsi
NOES:	None
ABSENT:	None
ABSTAIN:	None

\_\_\_\_\_  
Mayor

ATTEST: APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Deputy City Attorney