

5 – Constraints to Housing Conservation and Production

The California Government Code requires an analysis of governmental constraints on the maintenance, improvement, and development of housing for all income levels. Constraints may include zoning regulations and other land use controls, permitting procedures, design review requirements, building codes, site improvements, fees and other exactions required of developers.

While these measures are often important to ensure public health and protect the quality of life, they can also add to the cost of housing. It is useful to periodically reexamine local ordinances and policies to determine whether, under current conditions, they are accomplishing their intended purpose or constitute a barrier to housing production and conservation.

Non-governmental constraints also must be considered. Such constraints include factors such as the cost of land, the adequacy of infrastructure, the availability of credit and financing, and local attitudes about growth and development.

GOVERNMENTAL CONSTRAINTS

General Plan

The Albany General Plan was adopted in 1992. The Plan is being revised to incorporate current data and move the planning horizon forward from 2010 to 2035. The updated General Plan will incorporate new policies to address topics that have emerged since the early 1990s, such as complete streets, climate change, and sustainability. However, the Plan is not expected to result in a different vision for the City or significant land use changes.

Neither the existing General Plan nor the Plan Update are viewed as regulatory constraints. The Plan allows for relatively high densities, including 17 units per acre in the low density residential category, 34 units per acre in the medium category, 63 units per acre in the high category and 87 units per acre in the “tower” category. Moreover, the Plan designates the City’s commercial districts with mixed use classifications rather than pure commercial classifications, and specifically encourages housing on commercially zoned sites. Land use policies in the 1992 Plan (expected to be carried forward in the new Plan) strongly support housing conservation, diversity, production, and affordability. The new General Plan is expected to include “minimum” densities in the medium and high residential categories, and in the mixed use categories, to ensure that the city’s potential multi-family land supply is developed as efficiently as possible.

Residential Zoning

Albany has five residential base districts:

- R-1 (low-density, single-family dwellings)
- R-2 (medium density, single and multi-family dwellings)
- R-3 (high-density, single and multi-family dwellings, and boarding houses), and
- R-4 (high density residential towers)
- RHD (residential hillside).

The basic residential development standards for these zones are summarized in Table 5-1. The table indicates the minimum lot size requirements, maximum lot coverage, maximum floor area ratio, minimum setbacks, height restrictions, and minimum lot area per unit requirements that apply in each of the City's residential zoning districts. Numerous footnotes apply in this table within the zoning code – these have been abridged for presentation in the Housing Element.

The Municipal Code includes maximum density standards for each district. In the case of the R-1 district, the allowable density is 12 dwelling units per acre (DU/AC), while the density of the corresponding General Plan category is 17 DU/AC. The discrepancy is due to the fact that the General Plan recognizes pre-existing lots that are 2,500 square feet (which equates to 17 DU/AC). Zoning regulations permit the development of existing small lots without a variance, but prohibit the creation of new lots that are less than 3,750 square feet. The City could consider amending the code to allow 2,500 square foot lots, which would create the capacity for a number of new lots (lots that are between 5,000 and 7,500 square feet, with sufficient street frontage and setbacks to be divided in half). However, most lots in this size range have homes situated in the center of the lot, and the number of new developable lots that could be created through such a change would be small.

The allowable densities in the other zoning categories match those in the General Plan. A minimum lot size requirement of 3,750 square feet applies in the R-2, R-3, and R-4 districts as well. The RHD district, which only applies in hillside areas, has a minimum lot requirement of 5,000 square feet, although modified standards may be considered through Planned Unit Developments.

**Table 5-1:
Site Regulations for Residential Zoning Districts**

	Zoning District				
	R-1	R-2	R-3	R-4 ⁽¹⁾	RHD
Maximum Density (DU/AC)	12	35	63	87	6 or 9 ⁽²⁾
Maximum Floor Area Ratio Single-family dwelling Multi-family dwelling	0.55 ⁽³⁾	0.55 ⁽³⁾	0.55 ⁽³⁾ 1.50 ⁽⁴⁾	N/A	0.50 ⁽⁵⁾
Minimum Lot Area per Dwelling Unit (sq. ft.)	N/A	1,250	⁽⁶⁾	500	N/A
Minimum Lot Size (sq. ft.) Single-family Two-family Multiple-family Public/Quasi-public	3,750 N/A N/A 10,000	3,750 3,750 3,750 10,000	3,750 3,750 3,750 10,000		5,000 ⁽⁵⁾
Minimum Lot Width (ft.) Single-family Two-family Multiple-family Public/Quasi-public	35 N/A N/A 75	35 37.5 37.5 75	50 50 50 75		50 ⁽⁵⁾
Max. Lot Coverage (% of lot) Single-family Two-family Multiple-family	50% N/A N/A	50% 50% 50%	50% 50% 70%		40% ⁽⁵⁾
Maximum Building Height (ft.) Single-family Two-family Multiple-family	28 ⁽⁷⁾ N/A N/A	28 ⁽⁷⁾ 35/28 ⁽⁸⁾ 35/28 ⁽⁸⁾	35 35/28 ⁽⁸⁾ 35/28 ⁽⁸⁾		28 (downslope) - 35 (upslope) ⁽⁸⁾
Minimum Yard Setbacks (ft.) Single-, Two-, Multi-family: Front (both sides for thru-lots) Side, interior Side, exterior Rear Single-family 2nd story addition	15 ⁽⁹⁾ 7.5 20 ⁽¹¹⁾	15 ⁽⁹⁾ 7.5 ⁽¹⁰⁾ 15 ⁽¹¹⁾	15 ⁽⁹⁾ 7.5 ⁽¹⁰⁾ 15 ⁽¹¹⁾		15 ⁽⁵⁾ 10% of lot width or 5' whichever is greater 20 ⁽⁵⁾

Notes:

- (1) Site regulations not specified are determined by the Planning and Zoning Commission on consideration of an application for a use permit.
- (2) The Albany General Plan divides the area subject to the RHD District into two density classifications: 6 dwelling units/acre; and 9 dwelling units/acre.
- (3) FAR of 0.6 may be approved by Planning Commission, subject to findings
- (4) FAR may be increased to 1.75 where open space is provided at twice the minimum requirement.
- (5) Applies to single-family development on sites less than 2 acres. Also applies to PUDs on sites greater than 2 acres, except modified standards may be approved by the P&Z Commission and City Council.
- (6) Ranges from 690 SF of lot area per unit to 1,250 SF of lot area per unit, depending on the size of the lot.
- (7) Second story additions up to 35' may be approved by P&Z Commission subject to findings.
- (8) Maximum building height is three stories, or 35 feet above grade, except that maximum height at the front setback line shall be 28 feet plus a 45-degree daylight plane.
- (9) Ten percent (10%) of lot width, min 3' up to a max of 5', except that min for multi-family structures in R-3 is 5'.
- (10) One (1) foot shall be added for each 12' of height above the lowest 15' of building height.
- (11) Special provisions apply, allowing exceptions for the extension of non-conforming structures

The R-3 zoning district encourages lot consolidation through a sliding scale which correlates allowable density to lot size. For instance, a 3,750 square foot lot in the R-3 district may only have three units (1,250 SF of lot area per unit), which equates to about 35 units per acre. A 5,000 square foot lot in the same district may have five units (1,000 SF of lot area per unit). A 10,000 square foot lot may have 13 units (770 SF of lot area per unit). The requirement incentivizes consolidation of smaller lots to achieve the maximum density allowed under zoning (63 units per acre is only achievable on parcels 14,490 SF or larger).

Residential development in Albany is subject to Floor Area Ratio (FAR) standards. These standards establish the maximum floor area that may be built on a parcel using a ratio based on lot area. In the R-1, R-2, and R-3 zones, the limit is 0.55 for single family homes. In other words, a 5,000 square lot may have 2,750 square feet of floor area.

The Planning and Zoning Commission may approve an FAR of 0.60 if it determines that the 0.55 limit would only allow 1,500 square feet of floor space on the lot (e.g., the lot is smaller than 2,728 SF), or if the site is in the R-2 or R-3 zone and is surrounded by buildings with FARs greater than 0.60. An FAR of 0.60 may also be approved if the Commission finds that the design has architectural features that contribute to neighborhood quality, which could be achieved in a smaller building mass. FARs above 0.60 are not permitted for single family homes.

The single family FAR limits are not a constraint to housing development or conservation on most lots. In fact, these limits work effectively to preserve the City's stock of smaller single family homes. For example, the maximum floor area on a 4,000 square foot lot, which is fairly common in the city, would be 2,200 square feet. Many Albany homes are this size or smaller. Given the high value of land in the city, doing away with an FAR limit could result in the teardown of such homes and their replacement with much larger and less affordable homes.

For multi-family construction, the FAR limit is 0.55 in the R-2 zone and 1.50 in the R-3 zone. The R-3 FAR may be increased to 1.75 if the project provides double the required amount of open space. R-2 lots are generally developed with small single family homes, duplexes, triplexes, and fourplexes (rather than large apartment buildings). There is almost no vacant land in this zone and an increase in FAR could trigger the replacement of existing smaller 2-4 plex units with much more expensive units. R-2 contains some of the City's most affordable apartments, including studios and one-bedrooms in older buildings along Adams St., Madison St., and Kains Avenue.

In the R-3 zone, the 1.50 FAR is ample to facilitate multi-family construction and poses no constraint. The limiting factor in determining a project's ability to achieve the maximum density is more likely to relate to parking than FAR.

Lot width standards apply in all residential zones. R-1 and R-2 lots have a 35 foot width requirement and R-3 lots have a 50 foot requirement. In the R-2 district, slightly wider lots (37.5 feet) are required for two-family and multi-family buildings. This recognizes the function of R-2 as a transitional zone between higher density and lower density districts, and ensures ample side yard space is retained.

The lot width requirements do not constrain development and are reasonable, considering the overall requirements for lot size. There are a number of existing lots that are narrower than 35 feet (e.g., 25 x 100), but these lots are developed subject to Section 20.44, Nonconforming Uses, Structures, and Lots. Existing structures on such lots may be enlarged or extended, as long as they do not increase the extent of nonconformity.

Residential lots in Albany are also subject to lot coverage requirements. A 50 percent coverage limit applies to single family homes in all zones and to two-family homes in the R-2 and R-3 zones. Multi-family housing is subject to a 50 percent coverage standard in R-2 and a 70 percent standard in R-3. For single story homes, the coverage limit tends to be the limiting factor in determining floor area since it is lower than the FAR limit. On small lots (2,500 to 3,750 square feet), the coverage limit may require second story additions for those seeking to expand their homes, since the home size is effectively limited to less than 1,250 to 1,775 square feet on one level. The existing coverage limits strongly support the conservation of Albany's smaller homes and discourage teardowns.

The 70 percent coverage limit for multi-family housing in the R-3 zone is reasonable and is consistent with the allowable FAR. Considered together, these standards tend to favor three story construction over two-story – although if the ground level is used as “tuck under” parking, it may be difficult to reach the maximum allowed floor area. A 40 percent coverage limit applies in the RHD (hillside) zone – this is adequate, since the minimum lot size in this zone is 5,000 square feet and many of the RHD sites are sloped with multi-level homes.

Height limits apply in the R-1, R-2, and R-3 zones. The limit for single family homes is 28 feet in R-1 and R-2, and 35 feet in R-3. These limits are reasonable and very rarely an obstacle to single family construction or improvement. Three-story single family construction is uncommon in Albany, and the prevailing character in most neighborhoods consists of single story or 1.5-story bungalows. The Code allows the Planning and Zoning Commission to approve single family heights up to 35 feet where specific findings relating to topography or architectural compatibility can be made.

For two-family and multi-family construction in the R-2 and R-3 zones, maximum height is 35 feet, but a 28 foot height limit (plus a 45-degree daylight plane) is applied at

the front setback line to reduce shadows and maintain a lower scale streetscape. The 35' limit supports three-story construction and is generally sufficient for multi-family housing given the context of the R-3 zone. Taller heights in this particular zoning district could be inconsistent with the generally low scale of existing development.

Height limits in the RHD zone vary from 28 to 35 feet, depending on if the home is on an upslope or downslope lot. These requirements have not been a constraint in the past, given the single family character of construction and limited number of vacant sites.

A 15' front setback requirement applies in all residential zoning districts except R-4. For through lots (with frontage on two streets), the same standard applies on both sides. For hillside lots, the Planning and Zoning Commission has the authority to modify setbacks on planned unit developments of 2 acres or more. The 15' front setback is not considered a constraint in the R-3 zone, given the 70 percent lot coverage limit. Front setbacks are considered an important part of the R-3 zone and help maintain the prevailing residential character, especially along Adams Street and Kains Avenue.

Side setbacks for interior (e.g., non-corner) lots are calculated using a sliding scale based on lot width. They are based on 10 percent of the lot width (on each side of the house), with a minimum of 3 feet and a maximum of five feet. In other words, a 35 foot wide lot would need to maintain 3.5 feet of yard area on either side of the house. For multi-family structures in the R-3 district, a minimum 5 foot side setback applies. For corner lots, a 7.5 foot side setback applies.

Rear setbacks are 20 feet in the R-1 zone and 15 feet in R-2 and R-3. These setbacks are comparable to those in other cities, although some consideration could be given to reducing the 15' rear yard in the R-3 zone on parcels that back onto commercially zoned properties or other R-3 properties.

The City routinely allows exceptions to setback requirements for second story additions provided that certain conditions are met. Design review and a use permit by the Planning Commission would be required to build an addition above an existing wall or foundation which does not conform to the setbacks. Deeper encroachments into the setback are not permitted. Moreover, the Code discourages the extension of second stories if the non-conformity is the front yard setback.

Lot size, lot width, lot coverage, and height requirements do not apply in the R-4 zone.

Multi-family housing is allowed by right in the R-2 and R-3 zones, but requires a use permit in the R-4 zone – which seems counterintuitive since R-4 is the highest density district in the City. An action program in this Housing Element would make multi-

family permitted by right in R-4. This district is only mapped on one parcel (Gateview) and is already fully developed with high-rise towers.

Commercial and Mixed Use Zoning

Residential uses are permitted in the Solano Commercial (SC) and San Pablo Commercial (SPC) zoning districts. Each of these districts forms a corridor along their respective namesake streets, in some cases extending a parcel or two down the perpendicular side streets (on Solano), or through the block to the parallel north-south streets (on San Pablo). There are a number of overlay districts that also apply to these zones, including some which affect development standards and land uses. These are discussed in the next section.

Albany also has a Commercial Mixed Use (CMX) district where residential uses (other than live-work) are not currently permitted. Residential uses also are not permitted in the Public Facilities or Waterfront zoning districts, which are the other base zones in the city.

Development standards for residential uses in the SC and SPC district are summarized in Table 5-2. Both districts allow densities of up to 63 units per acre. However, to encourage lot consolidation, development is subject to a minimum lot area per dwelling unit standard which means the maximum allowable density can only be achieved on lots of 14,490 SF or larger. A sliding scale is used to calculate the number of units allowed on smaller lots. For example, five units would be allowed on a 5,000 SF lot (43.5 units per acre).

Floor area ratios (FARs) apply in the SC and SPC zones. FARs up to 1.25 are allowed in the SC zone. In other words, a 10,000 square foot parcel on Solano Avenue would be permitted to have up to 12,500 square feet of floor space. The floor space could be entirely residential, entirely commercial, or mixed use with housing above commercial space.

In the SPC zone, the maximum FAR varies depending on whether the building is entirely commercial or mixed use. An entirely commercial building may not exceed 0.95 FAR. A mixed use building with residential and non-residential uses may have an FAR up to 2.25, but the commercial component may not exceed 0.95. The higher FAR for mixed use is intended as an incentive to encourage multi-family housing on the San Pablo corridor. Mixed use may be either horizontal or vertical in configuration.

**Table 5-2:
Site Regulations for Commercial Zoning Districts**

	Zoning District	
	SC	SPC
Maximum Density (DU/AC)	63	63
Maximum FAR (Floor Area Ratio) Mixed-use Development (more than one use, including residential and commercial or other permitted nonresidential uses) Commercial portion of any development (not to be exceeded, regardless of mix with other uses, or any bonus increase in the total FAR of development) Multi-family dwelling, where it is the sole use of a site, and subject to maximum density permitted in R-3 District	1.25 1.25 1.25	2.25 0.95 N/A
Minimum Lot Area per Dwelling Unit (sq. ft.)	Same as R-3	Same as R-3
Minimum Lot Size (sq. ft.)	None	None
Minimum Lot Width (ft.)	None	None
Max. Lot Coverage (% of lot)	100%	100%
Maximum Building Height (ft.)	35'	Maximum three stories, or 38 feet above grade, except as noted in Note (1) below.
Minimum Yard Setbacks (ft.) Single-, Two-, Multi-family: Front (both sides for thru-lots) and corner side Side, interior Rear	(2) (3) (4)	(2) (3) (4)

Notes:

- (1) Where rear property line abuts a residential district, the maximum at the rear setback line is 20' plus a 45 degree daylight plane, or at the rear property line shall be 12' plus a 45 degree daylight plane.
- (2) None required along San Pablo Avenue. If front setback is provided, it shall not exceed a depth of four feet (4) at street level. Where fronting a street immediately parallel to San Pablo Avenue: 15 feet, plus a daylight plane. Where a property in the SC District has an exterior lot line at a street that intersects with Solano Avenue, and any property located directly across such a street is in a residential district: 15 feet, plus a daylight plane.
- (3) None, except where abutting R district.
- (4) May be waived by Planning and Zoning Commission, except where rear yard abuts an R district, in which case 10 feet applies.

There are no minimum lot size or lot width requirements in the SC or SPC zones. There are no lot coverage limits (100 percent coverage is explicitly permitted). Building heights are 35 feet in the SC (Solano Avenue) zone. In the SPC (San Pablo Avenue) zone, a three story, or 38 foot, limit applies. However, where the rear property line abuts a residential district, the maximum height must be reduced. In such cases, buildings may not exceed 20' at a point 10 feet from the property line or 12' at the property line itself. In each of these cases, a daylight plane also is required, to avoid casting shadows and to provide access to sunlight from adjacent residential yards.

There is no minimum front yard setback requirement along San Pablo Avenue. However, to maintain an active street presence, setbacks may not exceed four feet where street facing buildings are included. Parcels in the SPC zone on the parallel streets (fronting Adams and Kains) are subject to a 15' setback requirement, plus a daylight plane. There are no side or rear yard requirements in the SPC zone, unless the parcel abuts a residential district, in which case setback requirements ranging from 5' to 15' generally apply.

Multi-family housing is considered a permitted use in the SPC and SC zones, provided it is not on the ground floor facing the street. In the SC zone, ground floor, street-facing housing is allowed with a use permit. In the SPC zone, it is not allowed at all. However, ground floor multi-family is a permitted use in both zones, if it is located to the rear of street-facing non-residential space. The intent is to create active retail frontage along the commercial streets, and to ensure that the City retains sufficient space to meet the shopping, dining, entertainment, and service needs of Albany residents.

Overlay Zones

A number of overlay zones have been created to implement General Plan policies. These include:

- A Commercial Node (CN) overlay
- A Planned Residential-Commercial (PRC) overlay
- A Residential-Commercial Transition (RCT) Overlay

The CN overlay is intended to create intensified pedestrian and ground floor retail activity around major intersections. It has been mapped at the intersection of Solano Avenue and San Pablo Avenue, which is effectively the “center” of Albany. The overlay establishes a number of use limitations (e.g., no drive-up and drive-through facilities, no auto sales, etc.) and includes design standards for new development, alterations, and additions. The overlay does not affect the density, height, or standards for residential development.

The PRC overlay is intended to encourage mixed use on large sites on San Pablo Avenue. It has been mapped on the Town Centre shopping plaza (940-972 San Pablo) and on the west side of San Pablo between Clay Street and El Cerrito (e.g., Albany Bowl, the car wash, etc.) The overlay is primarily intended to ensure the compatibility of new residential uses with existing residential uses on the Adams Street frontage. It requires 15 foot setbacks along Adams Street and screening of parking areas. The overlay requirements do not generally affect building heights, densities, or uses.

The RCT overlay is similar to the PRC overlay, and is intended to ensure the compatibility of commercial development along the San Pablo corridor with nearby homes on Kains Avenue. A 15 foot setback requirement is required along Kains Avenue for properties in this overlay. The requirements of the overlay do not affect the feasibility of residential development.

Open Space Requirements

The zoning code currently requires that multi-family dwellings (3 or more units) provide at least 200 square feet of common usable open space per unit. This requirement can also be satisfied by providing private open space (e.g., balconies or patios accessible only from the unit), in which case each square foot of private open space counts as two square feet toward the common open space requirement. In other words, a 10 unit building may provide 2,000 square feet of common open space or 1,000 square feet of private decks and balconies. Various combinations of private and common open space also may be used. In the R-3 district, the City also offers an FAR bonus from 1.50 to 1.75 if the amount of required open space is doubled.

The 200 SF/unit standard is used by many other jurisdictions in the Bay Area, and the provision to provide double “credit” for private open space is a helpful way to reduce total development costs while providing an amenity for multi-family dwellers. The open space standard is not considered a constraint.

Parking Standards

In 1978, Albany voters approved Measure D. The Measure requires new residential units, regardless of size, rooms, or occupancy, to provide two off-street parking spaces. It also requires that conforming parking be provided when additions are made to single family structures that increase the original floor space by more than 25 percent or 240 square feet (whichever is less). The Planning and Zoning Commission may grant exceptions to this rule for larger additions where no new dwelling is created and certain findings are made.

Section 20.28.040 of the Municipal Code includes a use permit procedure for reducing the parking requirement to 1.5 spaces per unit where the Planning and Zoning

Commission finds that sufficient on-street parking is available. The Code also includes special provisions for secondary units, discussed later in this chapter in the section on second units.

Many properties in the City have areas that can practically function as parking spaces; however, the spaces do not meet dimensional requirements or are located in the required front yard, and are thus not considered “legal” off-street parking. The Municipal Code includes a provision in which the Planning and Zoning Commission may allow parking in the front yard area if it can make certain findings relating to the size and siting of the space and aesthetic and noise intrusion. Such provisions could potentially provide increased opportunities for second units and a higher number of residential units in the multi-family zoning districts.

The parking requirements affect the cost of housing and the feasibility of attaining the maximum allowable FAR and density on some sites. Since below grade parking is not counted as floor area, developers may pursue this as an option on larger sites.

The Measure D parking requirements are generally considered a cost constraint, particularly on smaller lots. They may make it difficult to modify existing buildings in the multi-family zones to add new housing units. Additional provisions for parking exceptions for small parcels (under 5,000 square feet) could be considered, but these would require voter approval. Similarly, a multi-family parking standard which was scaled based on the number of bedrooms in the unit or which varied based on zoning district and proximity to transit could help improve affordability. This too would require voter approval. This Housing Element includes an action program to begin developing a ballot measure to modify the City’s parking regulations so that they are more context-sensitive and reflective of actual needs.

It is important to note one unintended benefit of the existing parking requirement. On larger parcels, the standard may actually provide an incentive for affordable studio and one-bedroom units. Under state density bonus provisions, projects which include a certain percentage of affordable units are permitted to use parking standards established by the State Government Code under the density bonus law. Section 65915 (p)(1) of the state density bonus law stipulates that:

“Upon the request of the developer, no city (or) county.... shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

- (A) Zero to one bedroom: one onsite parking space.*
- (B) Two to three bedrooms: two onsite parking spaces.*
- (C) Four and more bedrooms: two and one-half parking spaces.”*

This requirement supersedes the Measure D requirement for studios and one-bedroom units in affordable housing projects, or projects in which specific percentages of the units are set aside as affordable (excluding those already required under the City's inclusionary zoning requirements) or are reserved for senior citizens.

Cumulative Effects of Development Standards

State law requires the City to consider not only the impact of individual development standards but also the cumulative effects of these standards on the cost and supply of housing. For example, it is possible that a setback requirement may appear reasonable on its own, but may limit development when combined with lot coverage or height limits.

The cumulative effects of the R-1 development standards can make it difficult to expand a home on a small (less than 3,750 SF) lot. This is particularly true for 25'-30' wide lots, which are subject to lot coverage and setback requirements that limit the developable envelope. Existing standards tend to favor second story additions for those seeking to make their homes larger, since it is difficult to expand without exceeding the lot coverage standard or encroaching into the setback. However, these standards support the preservation of Albany's smaller homes and discourage teardowns and no changes are recommended at this time.

In the SPC zones, it may be difficult to attain the maximum allowed FAR of 2.25 given the other standards that apply. In particular, the requirement to provide two parking spaces per dwelling unit make it difficult to attain the allowed FAR of 2.25 or the allowed density of 63 units per acre. Moreover, the absence of a minimum density requirement – coupled with the high parking standard for one-bedrooms and studios – creates an unintended incentive to create larger (two and three bedroom units), which are typically less affordable. A minimum density requirement (for instance requiring at least 20 units per acre where housing is included) is being considered through the General Plan Update. Once the General Plan is adopted, this requirement can help ensure that multi-family sites are developed with higher density units and are not used for single family homes, townhouses, or other larger and more expensive unit types.

Clearer and more quantifiable standards for mixed use development along the San Pablo corridor also would be helpful. The existing standards prohibit residential uses on the ground floor facing the street on San Pablo Avenue, but do not indicate the minimum percentage of ground floor commercial space that must be provided. As a result, a project may have shallow storefronts, with ground floor residences immediately behind them. During Housing Element work sessions, it was observed that ground floor retail space in mixed use projects was harder to rent than free standing commercial space, and sometimes consisted of awkwardly configured floor plans. Additional clarity on mixed use requirements is being considered as part of the

ongoing General Plan Update, and may be include in a future zoning revision beyond the time horizon of this Housing Element period.

Standards for Special Housing Types

The next section evaluates standards for special housing types in Albany, including second units, mobile and manufactured homes, emergency shelters, and transitional and supportive housing. Table 5.3 indicates the permitting requirements for different housing types in those zoning districts where residential uses are permitted or conditionally permitted. Action programs in this Housing Element have been proposed to eliminate use permit requirements for certain housing types, in compliance with State housing law.

**Table 5-3:
Housing Types Permitted By Zoning District**

Land Use ¹	R-1	R-2	R-3	R-4	RHD	SC	SPC	CMX
Single Family Dwelling	P	P	P	-	P	P	P	-
Two-Family Dwellings	-	P	P	-	UP	P	P	-
Multi-Family Dwellings, including units ground floor units facing street	-	P	P	UP	UP	UP	--	-
Multi-Family Dwellings, if above Commercial	-	-	-	-	P	P	P	
Live/Work Space	-	-	-	-	-	P ¹	UP	UP-M**
Manufactured or Mobile Home	P	P	P		P	P	P	-
Rooming/Boarding House	-	-	P	-	-	-	-	-
Small Residential Care	P	P	P	P	P	P	P	-
Large Residential Care	UP	UP	UP	UP	UP	UP ¹	UP ¹	-
Secondary Unit	P	-	-	-	P	-	-	-
Emergency Shelter	-	-	-	-	-	-	UP	(2)

Source: Albany Municipal Code 20.12.040

P=Permitted; UP=Use Permit; M-UP=Minor Use Permit; "--" = Not Permitted

Notes:

- (1) Not permitted on ground floor
- (2) Proposed as permitted use through this Housing Element

Second Units

The Secondary Residential Unit section of the Albany Municipal Code (AMC 20.20.080) is intended to foster and encourage the addition of small, affordable housing units. The City permits secondary units to be developed in the single-family residential zone (R-1) district only. There are many properties in multi-family zoning districts (R-2 and R-3) that are developed with only a single-family home. The City should explore revision of the Planning and Zoning Code to allow secondary housing units to be allowed in all residential zoning districts, so long as there is only one single-family residence and the second unit is a subordinate use which complies with all standards for a second unit.

The general development standards for secondary units are summarized below:

- 1) The creation of a secondary unit shall not cause the allowable floor area ratio for the site to be exceeded.
- 2) No secondary residential unit shall have a floor area greater than 650 square feet, nor have more than one bedroom, regardless of how the unit is located on the site. A secondary unit cannot exceed the size of the primary unit.
- 3) If located within the existing structure, the secondary unit is subject to the general development requirements for setbacks, height, and lot coverage for the site's zoning district, as defined by the Municipal Code.
- 4) If located as a detached structure, the setback from the rear and side property lines must meet the minimum required setbacks for the lot, and the unit must be at least 6 feet from the main structure. In addition:
 - a. The height of the accessory structure is not to exceed 12 feet.
 - b. The total lot coverage shall not exceed 30 percent of the area located between the main structure and the rear property line.
- 5) Any new construction of a second unit requires that conforming parking be created on-site (see discussion below).

The size restrictions for second units serve as a way to preserve the affordability of the units. They are not generally regarded as a constraint. The fact that detached units are subject to the same height requirements as accessory structures (e.g., 12 feet) makes it difficult to locate a unit above a detached garage, or to build a two story (or 1.5 story unit). Consideration could be given to potentially allowing them to exceed 12 feet in height. Additional modifications may be considered as part of the General Plan Update.

Secondary unit parking standards are subject both to Measure D, approved by Albany voters in 1978, and to State requirements. Measure D requires two spaces per unit, while state law requires that no more than one parking space be required for a secondary unit with one or less bedrooms unless findings are made.

To address this discrepancy, the City's Municipal Code includes a parking exception provision for secondary residential units based on the date of construction. Single family homes built prior to 1958---which constitutes most of Albany's single family housing stock -- are required to provide two off-street parking spaces on the property. These spaces may accommodate both a primary and secondary unit. Single family homes built between 1958 and 1978 which add a secondary unit are required to provide three off-street parking spaces, accommodating both the primary unit and the secondary unit. Single family homes built after 1978 (or new homes) which add a secondary unit are required to provide four off-street parking spaces, accommodating both the primary unit and the secondary unit. Where three or four spaces are required, tandem parking is permitted. Where more than one space is required for the second unit, the Planning and Zoning Commission must make a finding that the requirement is directly related to the use of the secondary unit and is consistent with neighborhood standards applicable to existing dwellings.

The parking requirements have shown to be somewhat of a hindrance to secondary unit development. In addition, the prohibition on tandem parking for those homes where only two off-street spaces are provided is also a disincentive. Allowing tandem parking for both the primary and the secondary units would enable a greater number of properties to have a second unit and seems appropriate, given that the ordinance also restricts second units to one-bedroom rentals.

Overall, Albany encourages the development of secondary units and believes that allowing them in all zoning districts and revising parking requirements will result in a higher number of secondary units being produced.

Mobile and Manufactured Housing

Section 20.24.150 of the Albany Municipal Code addresses manufactured homes. Such homes are permitted on all lots where single family homes are permitted, provided they are designed and located to be harmonious with the context of the surrounding homes and neighborhood. The Code establishes basic design criteria for such housing including:

- The unit's skirting must extend to the finished grade
- The roof must have eaves or overhangs of at least one foot
- No more than one manufactured home may be sited on each lot
- All parking standards subject to other single family homes shall apply.

These standards do not constrain mobile and manufactured housing development in the City.

Emergency Shelter

The City of Albany permits homeless shelters in the San Pablo Commercial (SPC) zoning district, subject to use permit requirement. Senate Bill 2 (SB2), which took effect on January 1, 2008, requires cities and counties to identify at least one zoning category in which emergency shelter can be located without discretionary approval from the local government. Cities are permitted to apply objective standards that regulate the number of beds or persons served, the size and location of client intake areas, the provision of on-site management, the proximity to other shelters, length of stay and security. The Albany Municipal Code does not currently limit the number of beds in a shelter, but does include a requirement that shelters must be at least 300 feet apart.

As noted in Chapter 6 of this Element, Albany intends to comply with SB2 by making shelters a permitted use in the CMX zoning district. As noted in Chapter 3 of this Housing Element, the City's homeless population is estimated at 70 residents. Albany must therefore demonstrate that the CMX zone has the capacity to support emergency shelters capable of meeting the housing needs of these residents.

Given the current trend toward smaller shelters, and potential concerns about impacts on surrounding uses, it is presumed that the need for shelter would be accommodated in multiple small facilities rather than a single 70-bed facility. For analysis purposes, it is presumed that shelter demand could be met through three facilities of approximately 25 beds each, spaced at least 300 feet apart consistent with the existing code. There are adequate sites in the CMX zone to meet this need.

The CMX zone encompasses approximately 35 acres located on the west side of the city. There are approximately 20 parcels in the district. These parcels extend in a linear pattern parallel to the Union Pacific rail corridor and are characterized by commercial, light industrial, and vacant land uses. Live-work development is currently permitted in this district, but other residential uses are not.

A number of parcels in the CMX zone are vacant or underutilized. The zone includes a large vacant retail store (PetSmart) on a 1.7-acre site just south of Buchanan Street. Several of the commercial buildings in the 1000 block of Eastshore Highway have vacant space available for rent. Along Cleveland Avenue north of the I-80 underpass, (more than 300 feet to the north), there are vacant parcels between 600 and 650 Cleveland (APN 66-2760-11-10, roughly 5,000 SF) and between 578 and 600 Cleveland (APN 66-2760-12-4, roughly 16,000 SF).

The City Corporation Yard is also located in the area, at 540 Cleveland Avenue. It is more than 300 feet north of the vacant parcels listed above. The City is currently planning to relocate the Corporation Yard to an adjoining site, creating a potential

opportunity on the vacated site. There are also several underutilized or partially vacant buildings on this section of Cleveland Avenue.

Each of the sites listed above would be large enough to accommodate a 25 bed shelter. Such a shelter is presumed to be approximately 2,500 square feet, using a 100 square foot per bed multiplier.¹ The sites listed above are all 5,000 square feet or more and could support a 2,500 square foot building, or have vacant space (or space soon to be vacated) of 2,500 square feet or more. The CMX zone allows 80% lot coverage, 45' tall buildings, and a 0.5 FAR allowance. The zone is accessible to public transit (the AC 25 Bus Line), with direct service to the El Cerrito BART station and is walking distance from numerous services along San Pablo Avenue.

In addition to these sites, emergency shelters would continue to be permitted in the SPC zone, subject to use permit requirements.

Single Room Occupancy Units (SROs)

The City currently has a land use category for boarding homes, which are allowed in residential areas. However, there is not a land use definition or category for SRO (single-room occupancy hotels). SRO's are often small in size and used as transitional housing, which include those at risk of becoming homeless. Such units are desirable because their small size and often shared or limited amenities generally make them affordable. An action program in Chapter 6 recommends that the City create a land use category for SRO's and establish a review and approval process for this use.

Transitional and Supportive Housing

The Albany Municipal Code defines transitional housing as "any sleeping facility or dwelling unit that serves as a transition from emergency housing to permanent housing, for a period generally of six (6) months to twenty-four (24) months, usually supported by social services to help prepare residents for independent living." The Code groups transitional housing together with emergency shelter for regulatory purposes. Section 20.40.070 refers to provisions for "emergency and transitional housing" without differentiating between the two uses. Section 20.40.070(A)(1) indicates that "emergency or transitional housing facilities may be located in the zoning district or districts where such use is listed in Section 20.12.040, Table 1. Table 1 does not explicitly reference transitional housing, but it is presumably covered under the use category "homeless shelter."

¹ For comparison, the City of Berkeley uses a 50 square foot/bed multiplier, plus 12.5 square foot/bed multiplier for client intake areas.

The zoning ordinance does not include a definition of supportive housing. To ensure compliance with SB2, which requires that transitional and supportive housing be treated like other residential uses of the same type, the definitions of transitional and supportive housing should be modified to be consistent with those in State law, and the ordinance should be modified so that they will be considered residential uses of property of the same type in the same zone (i.e., treated as either single-family or multi-family uses, depending on the type of structure.) This has been included as a housing element program in Chapter 6.

Housing for Persons with Disabilities

Since 2002, California law has required an analysis of constraints to the development of housing for persons with disabilities in the Housing Element. Persons with disabilities have a number of special housing needs related to the accessibility of dwelling units; access to transportation, employment, and commercial services; and alternative living arrangements that include on-site or nearby supportive services.

Albany's current policies with regard to special-needs housing and housing for persons with disabilities do not restrict the development of new housing. There are no extra requirements or constraints put on developing housing for persons with disabilities. The City accommodates requests for special structures or appurtenances (e.g. access ramps or lifts) serving disabled persons on a ministerial basis. There are no additional zoning, building code, or permitting procedures other than those allowed by State law.

Section 20.40.060 of the Municipal Code specifically addresses housing for disabled persons. This includes a Reasonable Accommodation clause which stipulates that persons with disabilities may request relief from various land use, zoning, and building laws, rules, policies, practices, and procedures. Requests may be submitted to the Community Development Director, and may be approved if the Director finds that the request is necessary to make housing available to an individual protected under the Fair Housing Act and will not impose an undue financial or administrative burden on the City. Design review requirements may be waived for such improvements.

Group Homes

The City of Albany currently allows residential care facilities homes of six or fewer persons by right in all residential zones. No use permit or other special permitting requirements apply in such instances. Design review has not been used to deny or substantially modify a housing project for persons with physical or developmental disabilities to the point where it is no longer feasible. The City does not impose special occupancy permit requirements for group homes or for retrofitting structures for group home use. Licensed residential care facilities for seven or more persons are also permitted in all zones where housing is permitted, subject to a use permit.

Family Housing

The Albany Municipal Code includes a definition of “family” as follows:

“Family” means two or more persons living as a single housekeeping unit in a dwelling. A family includes any servants and four or fewer boarders.

This is an inclusive definition that does not distinguish between related and unrelated persons and is consistent with California case law.

Design Review Requirements

Section 20.100.050 of the Municipal Code establishes a design review procedure. The intent is to ensure that new construction and alterations are visually and functionally appropriate to their site conditions and harmonious with their surroundings. Design review is required for all improvements except interior improvements, normal repair and replacement projects, small rear yard accessory buildings, certain types of signs, antennae, roof replacements, small skylights, and other minor exterior alterations.

Thresholds have been defined to determine whether design review is performed by Staff or the Planning and Zoning Commission through a public hearing. Projects that are less than 400 square feet (except second story additions), accessory structures between 120 and 200 square feet, and secondary units, are typically handled at the staff level. Projects that require additions larger than 400 square feet, major changes to rooflines, accessory structures over 200 square feet, second story additions, or height exceptions typically require a public hearing.

Approval of a design review application is subject to certain standards, including consistency with the General Plan, Residential Design Guidelines, and San Pablo Avenue Design Guidelines (for projects in the SPC zone). Projects must also be visually and functionally harmonious with their surroundings, appropriately deal with site constraints, and provide safe access for pedestrians and vehicles. The architecture, including massing and bulk, must be appropriate to the function of the project. Landscape improvements must be complementary to architectural design, and natural features must be preserved to the greatest possible extent. Consideration must also be given to privacy, the retention of existing structures, and solid waste management. Additional compatibility-related guidelines are considered for residential additions, and for additions which exceed the 28-foot height limit in the R-1 zone.

The Design Review process is facilitated by the availability of design guidelines. In 2009, the City adopted Residential Design Guidelines which serve as the standard by which staff and the Commission evaluate residential development. Staff works closely with applicants and their architects or contractors to ensure that designs conform to the

Guidelines. The San Pablo Avenue Design Guidelines were adopted in 1993. They strive to enhance San Pablo Avenue as a great retail street, oriented toward pedestrians and ground level activity. The Guidelines strongly support the concept of mixed use development with housing on the upper floors. They address such topics as the building silhouette, massing and height, façade rhythm and composition, signage, lighting, color, and site design.

The design review process is not a housing constraint, and is an important part of protecting the quality of life in Albany and making higher densities more acceptable to the community. Design review has effectively improved the quality of higher density architecture in the city, and provides assurance that future affordable housing will respect the community context and surrounding uses. The availability of clear guidelines provides a benchmark for staff and the Planning Commission, as well as property owners and developers. Moreover, the City's standard process is to consolidate the approval process for design review, use permits, parking adjustments, and CEQA into a single public meeting, reducing potential delays for applicants.

Inclusionary Housing Provisions

In 2005, the City adopted an inclusionary housing ordinance. The ordinance requires that any development with five (5) or more units set aside 15 percent of those units for low or very-low income households at prices deemed affordable to those groups. It also requires that any conversion of rental units to condominiums set aside 15 percent of the units at affordable prices.

The Ordinance allows developers to pay an "in-lieu fee" equal to the difference between the fair market value of the inclusionary unit and the affordable value of the unit if the City Council finds that production of the units on site is not feasible. Payment of an in-lieu fee is also an option for developers of five and six unit projects. Projects with fewer than four units are exempt from the requirements entirely.

For those projects where the inclusionary unit is provided on-site, the Ordinance provides opportunities for waivers of certain development standards to make the unit more feasible. The inclusionary unit may also be provided off-site, if it is not feasible to provide it on-site. For projects paying the in-lieu fee, the funds are placed in a special account which is reserved for affordable housing purposes. The funds may be used for land write downs, contributions to nonprofit organizations for housing construction, mortgage assistance for very-low- and low-income households, the operation of transitional housing, and similar activities.

In calculating the number of inclusionary units to be provided, the Ordinance requires that any "fractional" units of 50 percent or greater are construed as a whole unit (e.g., an 11 unit project must provide two units). Fractional units of less than 50 percent must

pay an in-lieu fee of equivalent value to the fraction. In other words, a 10-unit project would be required to provide one inclusionary unit, plus a fee equivalent to 3/7 of a unit. An equivalent number of units must be provided for low and very low income.

In 2009, the California Court of Appeals ruled that cities could not enforce inclusionary housing requirements for rental properties (*Palmer/Sixth St Properties v City of Los Angeles*). Thus, Albany's ordinance is currently only enforced on for-sale projects. Between 2005 and 2012, the Ordinance resulted in four affordable owner-occupied units at the Villa de Albany condominiums. Two of these serve very low income households, and two serve low income households. An inclusionary for-sale unit was also proposed in the 423-427 Talbot project, which has not yet been built. The Legislature and Governor are currently considering a bill that would restore the City's ability to require affordable units in rental projects.

Although inclusionary zoning is intended to have a positive impact on housing affordability by increasing the supply of affordable units, it may have unintended consequences. For example, the cost of the affordable unit may be recovered through higher prices on the market-rate unit. Albany has addressed this issue by offering relaxed development standards to accommodate the affordable units.

One consequence of the inclusionary requirement may be an increase in the number of three and four unit projects, since such projects are exempt from the requirements. At least three such projects were constructed in 2007-2012 on lots where zoning would have permitted a larger number of units. Requiring in-lieu fees for three and four unit projects would provide consistency, and more importantly provide additional funds for producing additional housing in the city.

Density Bonus

Under state law, cities are required to offer additional density to developers who include affordable or senior housing in their developments. The additional density is intended to provide an incentive to create affordable housing. Depending on the number of affordable units that are provided, developers may be able to increase the number of units allowed under zoning by 35 percent. The law requires that the City offer a number of additional incentives (such as relief from particular development standards) to make the additional density possible.

The City has adopted a density bonus ordinance as part of the Planning and Zoning Code (Section 20.40.040). A request for such a bonus was recently approved to reduce parking requirements for the UC Village Mixed Use site along San Pablo Avenue. The bonus, in conjunction with an approved Planned Unit Development to allow an increase in height, enabled the senior housing to attain at a proposed density of 80 units

per acre instead of the 63 units per acre permitted by the SPC zone. Additional height has been requested to achieve the higher density.

State law has been revised since adoption of Albany's ordinance in 2005. An action program in this Housing Element calls for a review of the current ordinance and any revisions needed to ensure that it meets the current statute and case law.

Building Code Requirements

Albany's Building Division administers state and local building construction regulations and provides permitting, plan checking, and inspection services. The City has adopted the California Building Code, Electrical Code, Mechanical Code, and Plumbing Code. A grading ordinance and flood damage prevention ordinance have also been adopted. These requirements do not pose a constraint to housing production and are essential to protect public health and safety.

The City has adopted a number of special requirements related to fire protection that go beyond the State Building Codes. These relate to such items as sprinklers, roofing systems, and photo-electric smoke alarms and are intended to protect public health and safety given the dense development in the City. The City intends to introduce an Ordinance in November 2013 to eliminate some of the fire protection requirements that are unique to Albany and begin applying the California Fire Code in a manner similar to other communities.

In 2007, the City adopted green building standards of compliance, as well as green point checklists for single family and multi-family development. The checklists are used to score proposed development projects based on their use of recycled building materials, energy conserving construction methods, bay-friendly landscaping, water-conserving plumbing fixtures, and other elements which reduce heating and cooling costs. Many of the checklist items are optional, but some – such as construction and demolition debris recycling and central collection areas for recycled waste – are mandatory.

The green building guidelines generally result in lower costs, rather than higher costs, as they help reduce utility bills. The City has added a number of local incentives to the checklists, such as extra points for projects which accommodate electric vehicles or additional street trees. The green building guidelines are an important part of the City's Climate Action Plan implementation and help support achievement of the State greenhouse gas reduction goals under AB 32. They are not considered a housing constraint.

Currently, the Community Development Department does not have a full-time professionally staffed code enforcement division. As a result, City staff work on code

enforcement activities is secondary to other responsibilities, and thus not all code violations can realistically be addressed. The City's general philosophy in obtaining code compliance has been through education, dialogue between parties, and other cooperative efforts.

In an effort to improve the City's code enforcement efforts, the City adopted Chapter 18 ("Nuisances") of the Albany Municipal Code in 2003. The purpose of this section is to address serious and/or persistent health and safety hazards resulting from the neglect, misuse or deterioration of property. In 2008, the City adopted, by reference, the Uniform Code for the Abatement of Dangerous Buildings published by the National Conference of Building Officials. In addition, in 2009, the City adopted an administrative citation ordinance that authorizes monetary penalties in significant code enforcement situations.

The City prioritizes code enforcement activities first to those situations where an immediate risk to health and safety of individuals exists. Second priority is given to situations related to improving the quality of life or preventing substantial property damage. In determining code enforcement activities, City staff must consider the resources required to address the situation relative to the amount of improvement expected. The City generally does not become involved in situations that are regulated and enforced by other government agencies, nor do they resolve private nuisances and civil matters between adjoining property owners.

Albany's current code enforcement structure ensures that the quality of housing in the City is maintained. It does not pose a constraint to the development of new housing, nor does it increase housing costs. Code enforcement promotes the maintenance of the existing housing stock by mandating standards of health and safety. In a number of recent cases, the City's code enforcement efforts resulted in uninhabitable homes being repaired and made available for occupancy.

Processing and Permit Procedures

Processing and permit procedures can be a constraint to the production and improvement of housing due to the time they add to the development process. Unclear permitting procedures, layered reviews, multiple discretionary review requirements, and costly conditions of approval can increase the final cost of housing, create uncertainty in the development process, and increase the overall financial risk assumed by the developer.

The time required to process a project varies depending on the size and complexity of the proposal, and the volume of projects being reviewed. Not every project must complete every possible step in the process. In addition, certain review and approval procedures may run concurrently.

Tables 5-4 and 5-5 identify the typical processing time for project entitlement. Most projects move from initial submittal to approval in 90 days or less. A new single family home can usually go through the permitting, design review, and approval process in 90 days. A large home addition, which is the most common type of project in the City, usually takes 30 to 75 days. Larger projects that require environmental impact reports may take up to a year or more. Single family additions and individual homes are categorically exempt from CEQA under Section 15303, “New Construction or Conversion of Small Structures.” Irrespective of the size of the project, City staff are available for pre-application meetings at no cost. In addition, preliminary study sessions are routinely scheduled with the Planning and Zoning Commission to get preliminary feedback, also at no cost to the applicant.

The City of Albany has limited staff resources, with only one planner, one permit technician, and one inspector. However, staff manages its caseload efficiently and can process the volume of permit applications within the parameters established by the Permit Streamlining Act. Additional staff may be retained on a contract basis for projects requiring specialized expertise or additional manpower. The City regularly seeks ways to expedite processing and improve the timeliness of its services. At this point in time, permitting and processing time is not considered a constraint.

**Table 5-4:
Timelines for General Permit Procedures**

Type of Approval or Permit	Typical Processing Time
Ministerial Review	60 days
Conditional Use Permit	90 days
Zone Change	120 days
General Plan Amendment	120 days
Site Plan Review	N/A
Design Review	60 days
Tract Maps	120 days
Parcel Maps	90 days
Initial Environmental Study	90 days
Environmental Impact Report	360 days

Source: Albany Community Development Department, 2009

**Table 5-5:
Typical Processing Procedures by Project Type**

	Single Family Addition	New Single Family Unit	Subdivision	Multifamily Units
Typical Approval Requirements	Design Review	Design Review	Subdivision Map	Design Review
				Planned Unit Development
Est. Total Processing Time	30-75 days	90 days	120 days	270 days

Source: Albany Community Development Department

Site Improvement Requirements

In many California cities, home builders are required to provide a full complement of on-site improvements such as streets, curbs, gutters, water lines, and sewer lines. This is particularly true in newer communities where development is occurring on sites that were not previously developed. Because Albany is completely built out and all development opportunities are on infill sites with a full complement of existing services, site improvement requirements are minimal. Subdivisions are relatively uncommon and construction of new streets is extremely rare, with the exception of the master planned development at UC Village.

All of the Housing Opportunity sites listed in Chapter 4 have full utilities, street frontage, access, and services. Thus, there are no site improvement requirements associated with development, other than construction of utility laterals to connect each parcel with the electric, gas, sewer, water, drainage, and telecommunication facilities in the adjacent public right of way. Some of the City’s sewer system consists of aging clay pipes. Depending on the nature and location of a residential development project, it is possible that sewer replacement could be required as a project component. Projects may also be required to improve sidewalks, plant trees, and provide similar on-site amenities. The City has not adopted any requirements above and beyond those authorized by the Subdivision Map Act.

Fees and Exactions

Housing development is typically subject to two types of fees:

- Permit processing fees to defray all or a portion of the City’s labor costs related to reviewing applications for compliance with planning and building standards; and

- Impact fees, imposed to defray all or a portion of the capital costs related to the development project.

For owners of existing homes, high permitting fees can affect the property owners' ability to make improvements or repair, especially for lower-income households. For new home construction, fees can make a project less affordable, since the costs are often passed on through rents or sales prices. In addition, subdivisions and multifamily projects may incur the cost of preparing environmental impact reports, traffic studies, soil reports, and filing fees for tentative and final maps.

Table 5-6 illustrates the price range of the typical fees for a new housing unit. Planning and Zoning Commission Design Review fees for a new home are typically just over \$2,000. Additional costs are incurred if Variances or Parking Exceptions are needed. The cost of the building permit is based on the value of the project. For a new home with permit value of \$400,000, the cost would be \$2,000. Plan checking fees would be added to this total, and are based on a \$95 hourly rate for plan checking services.

The school impact fee is one of the largest components of permitting costs. For a 2,000 square foot new home, the fee would be \$5,940. For a 500 SF second unit, the fee would be \$1,495. Projects smaller than 500 SF, including smaller additions and small second units, are exempt from the school fee. The City also collects a capital facilities fee, which is calculated on a sliding scale based on the size of the project. The fee is usually \$1,365 for a single family home, \$840 for a 600-1000 square foot unit, and \$375 for a unit less than 600 SF. Other fees include sewer collection and public art fees. The typical permitting cost for a new single family home is approximately \$15,000.

Art in Public Places Program

The City adopted a Public Art Ordinance in 2007. The Ordinance requires that any public or private development with a construction cost of greater than \$300,000 (as calculated based on International Code Council building valuations) must include a public art component equal to 1.75% of the total construction costs. The contribution percentage is greater than most local cities, but to date, applicants have not indicated that the requirement is affecting the financial feasibility of proposed projects.

The Art in Public Places Program includes exemption and hardship procedures for publicly-assisted projects in which the public source of funding, or other applicable regulation or policy, prohibits the use of funds for public art. There also is a hardship in which applicants may seek reduction in requirements. The City also could consider amending the ordinance to explicitly exempt affordable housing projects.

**Table 5-6:
Typical Housing Development Fees (Per new unit)**

Type of Fee		Price Range
Minor Use Permit		\$1,077
Major Use Permit		Min. \$2,027(*)
Residential Parking Exception		Min. \$2,027(*)
Variance		Min. \$2,027(*)
Design Review-Staff		\$1,077
Design Review-P&Z Comm.		\$2,027
Building Permit		
	Value of work < \$25,000	1.25% of project
	Value \$25-\$50,000	1.00% of project
	Value \$50,000-\$250,000	0.75% of project
	Value over \$250,000	0.50% of project
Residential Sewer Connection		\$1,166/unit
School Fees		\$2.97/SF for projects over 500 SF
Capital Impact Fees		
	Residential additions	\$0.65/SF
	New unit 600 SF or less	\$375/unit
	601-1000 SF	\$840/ unit
	1001 SF or over	\$1,365/ unit
Park Dedication Fee		Required for subdivisions only
Public Art Fee		1.75% of project value
Second Unit Fee		\$1,077
Plan Checking Fee		\$95/hr , at cost
Grading Permit		\$0-\$2,100

Source: Albany Community Development Department

() Items are charged at cost, based on actual staff hours at standard rates plus consultant costs or contract city staff and outside legal services.*

NON-GOVERNMENTAL CONSTRAINTS

Non-governmental constraints include the availability and condition of infrastructure, environmental factors, the cost of land and construction, the availability of financing, and public opinion. These are discussed below.

Infrastructure

In some communities, the availability of water, sewer, storm drainage, and other utility services may be a constraint to housing production. This is less applicable in Albany, as the City is compact and built out, with housing sites that are already fully served by infrastructure. There may still be infrastructure needs associated with changing the use of a site from commercial to residential, as well as issues associated with the age and condition of the water and sewer network.

Albany receives its water and sewer services from East Bay Municipal Utility District. The City represents approximately 1.4 percent of the EBMUD Service Area population. EBMUD has prepared an Urban Water Management Plan which includes capital improvement plans to serve its 1.3 million customers located in Alameda and Contra Costa Counties for the next three decades. The District is also implementing plans to supplement its water supply to meet long-term growth forecasts, and is carrying out seismic upgrade projects throughout the distribution system to replace aging lines and storage tanks. The utility has accounted for Albany's projected growth in its forecasts and capital improvement programs and has the capacity to meet expected needs.

Like all cities in the EBMUD service area, Albany faces the ongoing challenge of conserving water in response to drought, changing climate conditions, increasing population in California, and the high costs and environmental impacts of creating new water sources. The City works with EBMUD on an on-going basis to promote public education on conservation, bay friendly landscaping practices, and other measures to reduce water consumption.

EBMUD provides wastewater treatment services to Albany and operates regional wastewater collection interceptor lines through the City. The Albany Public Works Department maintains the local sewer system, which includes approximately 35 miles of sewer mains and 14 miles of lower laterals. The City has been systematically rehabilitating its wastewater collection system since the late 1980s. Over the last 25 years, approximately one third of the total length of mainline and a proportionate length of lower laterals have been rehabilitated or replaced. Sewer mains that have not yet been replaced or rehabilitated are predominantly six inch vitrified clay pipe (VCP) with cement mortar joints. As of 2012, the average age of the collection system was about 60 years.

The City requires that non-compliant sewer laterals (e.g., clay pipes) on private property be repaired or replaced when a property is sold or when a building permit which exceeds five percent of the building value is issued. Licensed plumbing contractors typically perform an inspection of the lateral to determine the need for replacement. These types of measures are essential to reducing wet weather sanitary sewer overflows to streets and local creeks, in order to achieve regional clean water goals.

In conclusion, the availability of water and sewer services is not considered a constraint to housing production. The City will continue to work with EBMUD and local property owners to ensure that capacity remains adequate, and that capital investment projects are directed to those areas where system improvements are needed most. The City is currently embarking on a Sewer Systems Master Plan to guide continued improvement to its sanitary sewer lines. Pursuant to Government Code 65589.7, EBMUD has established policies and procedures which ensure that affordable housing is given priority in the delivery of water and sewer services. The City will submit its Housing Element to EBMUD following its adoption so that EBMUD is apprised of its housing opportunity site locations and housing policies.

Environmental Constraints

Potential environmental constraints to development include attributes such as steep slopes, landslide hazards, flooding, seismic hazards, and the presence of hazardous materials. While such constraints can usually be mitigated through design, they can add to the cost of construction and make housing less affordable.

A number of residentially zoned properties on Albany Hill have steep slopes and landslide hazards, potentially making them more costly to develop. These sites have not been included as prospective higher density housing sites in this Element for this reason. Current zoning standards favor the clustering of buildings on such sites through planned unit developments, enabling higher densities and a more affordable housing product while preserving the most sensitive areas as open space.

Flooding constraints in the City are associated with the five creeks that flow within and along Albany's borders from the Berkeley Hills to San Francisco Bay: Cerrito, Codornices, Marin, Middle, and Village. Three of these creeks are predominantly underground and run through private property. Flooding problems are most commonly associated with the area along the railroad tracks, where culverts may constrain water flow. The housing opportunity sites are not located in flood prone areas.

Seismic constraints, particularly the potential for ground shaking in major earthquakes, are present throughout the City. As noted earlier in this chapter, the City administers

and enforces building codes which are intended to mitigate seismic hazards. These codes are required throughout the Bay Area to protect life and property.

Hazardous materials issues may be associated with prior uses on designated housing opportunity sites. For instance, the recently built multi-family (mixed use) development at the corner of Portland and San Pablo Avenues took place on a former gas station site. Remediation of soil contamination associated with underground fuel tanks took place prior to the site's development. As part of the Housing Element site inventory, the California Department of Toxic Substances Control Envirostor data base was reviewed to determine the presence of hazardous materials on the listed sites. The following information is relevant:

- The Goodyear Tire site (431 San Pablo) was considered a Leaking Underground Storage Tank (LUST) site until 1996. At that time, the cleanup status was deemed complete and the case was closed.
- The Plaza Car Wash / Norge Cleaners site (398-400 San Pablo) is listed as a Leaking Underground Storage Tank (LUST) site. Underground tanks were removed in 1990, and the site has had monitoring wells to track groundwater contaminants since that time. Additional remediation could be required prior to development.

None of the other housing sites appear in the Envirostor database.

Land and Construction Costs

As a dense and already developed city, land costs in Albany are high. A search of local real estate websites indicated there were no *vacant* (e.g., raw land) residential or commercial properties listed for sale within the city. Properties listed for sale are already improved, with structures that would either need to be rehabilitated, or demolished and replaced for residential development. For example, a 2,200 square foot retail building at 625 San Pablo, situated on a 5,000 square foot lot, was recently offered for \$689,000. A 1,957 square foot recently renovated retail building and one-bedroom rental unit, situated on a 10,000 square foot lot at 953 San Pablo, is listed at \$725,000.

The absence of raw, developable land for sale represents a constraint to affordable housing development in Albany, just as it does in the neighboring cities of Berkeley and El Cerrito. For multi-family developers, a variety of subsidies, tax credits, and development incentives may be needed to offset the high cost of buying a developed site, demolishing and removing existing uses, and building a new structure.

Construction costs in Albany also are high, as they are throughout the Central Bay Area. According to the Building Standards Building Valuation Data, the total cost of constructing a wood frame single-family residence in the Bay Area rose from \$85.00 per square foot in 2000 to \$107.18 per square foot in 2009. This represents an increase of 26

percent during this time period. For multi-family housing construction, Building Standards Building Valuation Data indicates that the cost of construction for a typical three-story frame and stucco apartment house rose from \$80.00 per square foot in 2000 to \$95.12 per square foot in 2009. This represents a 19 percent increase in construction costs over this time period.

Comparable figures in Albany are even higher, since most work is custom-built on individual infill parcels rather than mass produced in large subdivisions or projects with hundreds of units. For residential remodels and additions, costs in excess of \$250 a square foot are common. The high cost of land and construction provides a compelling argument for an affordable housing strategy which includes secondary units, particularly where such units can be created within the footprint of existing homes. Although renovation may still be required to create a second unit, the cost is likely to be less than building an entirely new structure.

Financing Costs and Availability of Funds

Housing affordability is affected by interest rates, mortgage lending practices, and the availability of credit. As of mid-2013, mortgage interest rates for a 30 year fixed loan were as low as 4.25 percent. This compares to an average rate of over 8 percent in 2000, and rates as high as 17 percent in 1982. The decline in interest rates have somewhat offset the inflation of housing and construction costs. Low mortgage rates have created opportunities for first-time buyers and homeowners of all incomes seeking to re-finance existing mortgages.

The drop in interest rates has been counterbalanced by more restrictive lending terms following the drop in housing prices and increase in foreclosures in 2008 and 2009. Financing may be more difficult to secure now than it was six years ago, particularly for low and moderate income buyers. Credit history is now more rigorously investigated. Higher down payments may now be required for mortgages and higher incomes may be required to qualify for loans. Requirements for a 15 or 20 percent downpayment could be equivalent to an entire year's salary for a moderate income household. Programs to assist first-time buyers (such as the federal Mortgage Credit Certificate program and downpayment assistance programs) can be a helpful way to make housing more affordable in such instances.

The limited availability of funds for affordable housing is also a constraint. In particular, the abolition of redevelopment agencies in 2011 removed a potential funding source for affordable housing in Albany, as it did in cities throughout the Bay Area. Affordable housing developers have had to turn to other sources for gap financing, and some of these sources also have been reduced or jeopardized. For instance, HOME Investment Partnership and CDBG funds have declined in recent years

Public Opinion

Another non-governmental constraint is community opposition to higher-density or affordable housing. Such objections may be based on legitimate concerns about traffic, parking, school overcrowding, police and fire response times, and similar issues. However, these concerns also may be based on misinformation and misconceptions about affordable housing. Some residents associate affordable housing with buildings that are cheaply constructed, poorly managed, and out of scale with the community. Acceptance can be improved by increasing public awareness of the many excellent examples of affordable housing that have been built in the East Bay in recent years, and profiling the tenants of those buildings. In many cases, the tenants are seniors and young professionals not unlike those who live and work in Albany today.