



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 24, 2007

REPORT NO.: 07-021

ATTENTION: Council President and City Council
Agenda of January 30, 2007

SUBJECT: Affordable Housing Density Bonus. Project Number 63422.
Citywide. Process Five.

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107.
Planning Commission Report No. PC06 -264.

REQUESTED ACTION: Approval of amendments to the Land Development Code related to the city's Affordable Housing Density Bonus regulations.

STAFF RECOMMENDATION:

1. **CERTIFY** Supplement to Environmental Impact Report No. 96-0333 (Project 63422) and adopt the Findings and Statement of Overriding Considerations.
2. **APPROVE** the amendments to the Land Development Code and the City's Local Coastal Program related to the city's Affordable Housing Density Bonus regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

SUMMARY:

State law requires cities in California to grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement.

The state has amended its affordable housing density bonus three times since 2003 with the latest amendment being implemented in January 2006. The intent of the amendments was to increase the use of the state density bonus program and thereby increase the supply of affordable housing in the state. Passage of these bills has made San Diego's density bonus regulations outdated and partially out of compliance with state law. The draft Affordable Housing Density Bonus regulations in Attachment 1 incorporate current state requirements as well as two city-initiated

amendments. Although the reorganization of the regulations may make it difficult to follow, a strikeout/underline of the regulations has been provided as Attachment 2.

Planning Commission Recommendation:

On October 12, 2006 the Planning Commission voted 5-0-0 to recommend approval of the proposed amendments related to affordable housing density bonus with the following recommendations:

- Investigate the relationship between parking needs and affordable housing to determine if the parking standards should be reduced.
- Look at the relationship between the locations of projects using density bonus and transit to see if there can be a further reduction in parking requirements.
- Attempt to simplify the way the regulations are written to make them more user friendly.
- Track the use of the density bonus provisions to learn where they are being used, the deviations requested, and how existing zoning patterns in the city may be affecting its use.
- Consider allowing applicants that satisfy the affordable housing component of the regulations to request the incentive(s) provided in the regulations while forgoing the increase in density.
- Remove the option of the in-lieu fee in the Inclusionary housing Ordinance.

Background:

The purpose of this draft of the Affordable Housing Density Bonus regulations is to bring the city's regulations into conformance with state density bonus law. Current state density bonus law requires that the density bonus be granted ministerially (Process One). It also states that an applicant may be granted up to three incentives ministerially. The number of incentives to be granted is based upon the percentage of affordable units in a project and the level of affordability (very low income, low income, or moderate income). The incentives may take the form of deviations from development regulations. State law also directs that an applicant proposing a project that uses density bonus by itself, cannot be required to process a land use plan or zoning ordinance amendment. However, applicants requesting deviations to regulations, or changes to land use plans or zoning beyond those permitted through the affordable housing density bonus regulations shall be required to comply with current Land Development Code processes.

Project Description:

The draft Affordable Housing Density Bonus Regulations in Attachment 1 reflect the amendments made to state density bonus law. The following is a summary of significant changes to state density bonus law that have been enacted.

- A new density bonus category was added for projects that donate land to the city for developing affordable housing.
- A new density bonus category was added for projects that include for-sale moderate income housing units in common interest developments.

- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless it conflicts with another funding source or law.
- All rental projects that receive a density bonus must maintain the affordable units at the required affordability level for 30 years.
- The maximum state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was created. The percent density bonus an applicant is granted is determined by the percentage of affordable units provided and the level of affordability (low income, very low income, or moderate income).
- The city must grant up to three incentives to qualifying projects that request incentives. The number of incentives a project is eligible for depends upon the percentage of affordable units being provided and the level of affordability.
- Applicants choose the incentives. The city must grant the requested incentive(s) unless specific findings are made that granting the request would not be necessary to provide the affordable units; or that the requested deviation would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The city must offer an additional incentive to qualifying projects that include on site day care facilities meeting specified conditions.
- The revised state law limits parking standards that a city can place on projects seeking a density bonus. Furthermore, a development using density bonus may use tandem or uncovered parking to meet the parking standard.
- Density bonus for senior developments also applies to senior mobilehome parks.

In addition to the state required amendments for affordable housing density bonus are two city-initiated amendments. At the direction of the Land Use and Housing Committee, staff has included a density bonus incentive for applicants that elect to satisfy their required inclusionary housing requirement onsite rather than through payment of an in-lieu fee. The “onsite building bonus” would provide a density bonus equal to the number of affordable units provided, up to a maximum of 10 percent of the total pre-density units in the project to be approved ministerially. An applicant could apply for both the state density bonus and the onsite building bonus up to a maximum allowable density bonus of 35 percent.

The second city-initiated amendment would increase the minimum density bonus for projects that provide moderate income housing within common interest developments. The Housing Commission and the City Planning and Community Investment Department believe that the state’s minimum requirement for a 5 percent density bonus for moderate-income ownership units is not sufficient to offset the cost of providing affordable units in San Diego due to the region’s high

costs and is therefore not a viable incentive. Since cities do have the option of offering a more generous density bonus ratio than that required by the state, it is recommended that in San Diego, the minimum density bonus for moderate income projects be increased to 20 percent. An applicant could apply for this bonus and the state density bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

Additional modifications and clarifications have been incorporated into the regulations in response to recommendations made by the Planning Commission on October 12, 2006.

Regarding parking, the parking ratio for units of 4 or more bedrooms has been reduced from the state requirement of 2.50 spaces per unit to the citywide standard of 2.25 spaces per unit and clarifying language has been added to make clear that projects may take advantage of reductions in parking currently permitted for projects within the Transit Area Overlay Zone and for units designated for very low income households. Regarding the Commission's concerns regarding the complexity of the regulations, staff has made modifications to the regulations and the Development Services Department will develop an Affordable Housing Density Bonus information bulletin to assist the public. The Planning Commission's direction to track projects using the density bonus program is an administrative function that can be accomplished. Staff has provided as Attachment 6 a graphic illustrating Income and Density Bonus Project Distribution throughout the City of San Diego as of 2006.

The Planning Commission also asked that consideration be given to modifying the regulations to allow applicants that provide the required percentage of affordable housing units to take advantage of the incentives in the regulations without accepting the density bonus units. It is clear that the state density bonus legislation was written to provide incentives only to projects that use the density bonus. Regulations that provide incentives for applicants that provide a required percentage of affordable housing units, without the increased density, will be part of a separate ordinance to be brought to the City Council for consideration later in the year.

Due to the complexity of the state density bonus regulations, the Housing Commission has drafted a procedures manual. This manual is to be used by potential density bonus applicants, to explain the procedures and requirements for each of the categories. It contains information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, rents and for-sale prices, information on the interaction/relationship between the proposed onsite building bonus and state density bonus provisions, and Housing Commission fees for administering the program.

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the city outside the Coastal Overlay Zone 30 days after the second reading by the City Council. Implementation in areas within the Coastal Overlay Zone will become effective upon the unconditional certification of the regulations by the California Coastal Commission.

Environmental Analysis:

The City of San Diego previously prepared Environmental Impact Report No. 96-0333 for revisions to the Land Development Code. It has been determined that the proposed amendments to the Affordable Housing Density Bonus regulations may result in significant impacts not discussed in the previous EIR. The proposed amendments have the potential to result in significant impacts to visual quality, transportation, and parking; and cumulative impacts to visual quality and parking. The extent to whether these potential impacts may or may not occur depends several factors, including but not limited to, project review process (ministerial versus discretionary), site specific project location, surrounding natural and built characteristics, project design, and the ability to make the required findings to deny incentives that could result in an impact.

FISCAL CONSIDERATIONS:

The costs of processing this amendment to the city's density bonus regulations are shared by the City Planning and Community Investment Department which is funded through the general fund and the Development Services Department Code Update Section which is funded as an overhead expense in the Development Services Department's budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Housing Commission - On April 8, 2005 the Housing Commission voted 4-0-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low and very low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

1. Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns.
2. Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of the Committee for possible review and comment prior to adoption by the state or federal legislatures.
3. Chart and track projects that take advantage of the density bonus program. Monitor the number of incentive(s) a project uses, the project location, and to what extent the project relies on state versus local elements of the program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Code Monitoring Team (CMT) - On April 12, 2006, the City's CMT voted 6-0-1 to support staff recommendation.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0-0 to support staff recommendation with four recommendations. The first was that the proposed density bonus for projects that satisfy their inclusionary housing on site be expanded to also include the regulatory incentives afforded the state density bonus categories. Expanding this bonus to also include the incentives would dilute the incentive of providing additional affordable housing (beyond that required by the Inclusionary Housing Regulations) through the density bonus regulations. The second and third recommendations were that the review process for deviations for projects requesting a density bonus be reduced from the current city-wide Process Four to a Process Three, and that a separate category of density bonus should be developed for accessible units. Projects utilizing density bonus would be entitled to up to three deviations/incentives ministerially. Reducing a decision level for deviating from citywide zoning regulations as well as addressing the need for accessible living units should be considered citywide and not in a piecemeal fashion for only for certain project types. The fourth recommendation was that the minimum density bonus for moderate income housing be increased from 5 percent to 20 percent in recognition of the high development costs in San Diego. This has been included as a city-initiated amendment.

Community Planners Committee (CPC) - On February 22, 2005, the CPC voted 11-1-0 to oppose staff recommendation and recommended that the regulations be revised to not vary from or exceed the requirements of the State required Density Bonus Program. Specifically, the CPC did not support the two city-initiated amendments. Staff believes that the CPC recommendation to oppose the city-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. Staff believes the two city-initiated amendments would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing units would be developed more rapidly than they would thorough collection of in-lieu fees.

KEY STAKEHOLDERS:

The key stakeholders include the building industry and those organizations that advocate for increasing the city's supply of affordable housing.

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ANDERSON/DJ

- ATTACHMENTS: [1. Draft Regulations Related to Affordable Housing Density Bonus](#)
[2. Strikeout/Underline Comparing Existing and Draft Regulations](#)
[3. Comparison between State Requirement and City Proposal for Moderate
Income Density Bonus](#)
[4. Parking for Projects Utilizing Affordable Housing Density Bonus](#)
[5. Density Bonus Projects by Planning Areas and by Council Districts](#)
[6. Income and Density Bonus Project Distribution \(2006\)](#)