

DATE ISSUED: April 25, 2001

REPORT NO. 01-072

ATTENTION: Honorable Mayor and City Council
Docket of May 1, 072

SUBJECT: City Council Acceptance of Coastal Commission's Modifications to
Affordable Housing Density Bonus Ordinance and Introduction of
Amended Ordinance

REFERENCE: Manager's Report P-99-068

SUMMARY

Issue - Should the City Council accept the modifications to the Density Bonus regulations required by the California Coastal Commission and introduce an amended ordinance to implement the modifications?

Manager's Recommendation -

1. Accept the modifications made by the Coastal Commission and introduce an amended ordinance to implement the modifications.
2. Direct the City Manager to work with the environmental community, the State Department of Housing and Community Development, community representatives, affordable housing advocates, SANDAG and other affected interests to create an increased understanding of the interaction of the Density Bonus Program with the Coastal Act and to increase use of the program in general.

Planning Commission Recommendation - On March 25, 1999, by a vote of 7-0, the Planning Commission voted to recommend adoption of the Density Bonus amendment, as submitted to the Coastal Commission. The modifications made by the Coastal Commission were not resubmitted to the Planning Commission for further consideration.

Community Planning Group Recommendation - The Density Bonus amendment was reviewed with the Community Planners Committee (CPC) as an informational item on February 23, 1999. As an informational item, a formal recommendation was not made.

Housing Commission Recommendation - On April 23, 1999, by a vote of 5-0, the Housing Commission voted to recommend adoption of the proposed Density Bonus amendment, as submitted to the Coastal Commission. The modifications made by the Coastal Commission were not resubmitted to the Housing Commission for further consideration.

Environmental Impact - The City of San Diego, as Lead Agency, under CEQA, has prepared and completed a Negative Declaration, LDR File No. 98-1218, dated March 11, 1999, covering this activity.

Fiscal Impact - The modifications made by the Coastal Commission will likely result in increased competition by Density Bonus projects with other housing projects for already insufficient affordable housing funds.

Housing Affordability Impact - Acceptance of the modifications made by the Coastal Commission will make it difficult to apply the Density Bonus Program as a tool to implement affordable housing in the Coastal Zone.

BACKGROUND

The City was required to amend its Density Bonus regulations to comply with a 1990 change in state law intended to facilitate its use. The revised regulations have been in effect in the City since June 1999 outside the Coastal Zone. However, the regulations within the Coastal Zone must be approved by the California Coastal Commission to become part of the City's certified Local Coastal Program Implementation Ordinances.

On November 13, 2000, the Coastal Commission approved the ordinance with modifications proposed by Coastal Commission staff which were opposed by City staff. The ordinance, as amended by the Coastal Commission, would allow for modifications to applicable development regulations as an incentive for affordable housing. There is no limit on the number of such modifications which may be incorporated into a project except when all such incentives have an adverse effect on coastal resources. In those instances, **only the one incentive that is most protective of coastal resources may be granted.** This change is more restrictive than state law and would cause the City's regulations in the Coastal Zone to be more restrictive than outside the Coastal Zone.

DISCUSSION

San Diego's affordable housing crisis has been well documented. The crisis is most severe in the Coastal Zone where housing costs are highest. The provision of affordable housing in high cost communities is a cornerstone of the City of Villages strategy in the draft Strategic Framework Element and is a principal recommendation of the City's draft Housing Element. It is essential in order to provide affordable housing opportunities in proximity to employment centers. Given the difficulty of developing affordable housing in the Coastal Zone, applicants seeking to use a Density Bonus may potentially need more than one deviation or additional incentive to make the affordable housing components of their projects economically feasible.

The Coastal Commission approved an ordinance that says where all potential deviations or modifications sought by an applicant would have an adverse effect on coastal resources, the City may grant only one additional incentive. Further, that incentive must be the one which is determined to be most protective of coastal resources. Staff believes that in many instances, it may be difficult to clearly determine which modification is the most protective of coastal resources or what constitutes an adverse effect. This provision will therefore place undue emphasis on financial assistance as the one allowable incentive, thus making competition for this

already scarce resource even more competitive.

City staff believes that the changes made by the Coastal Commission do not allow the effects on coastal resources to be weighed against the value of the modification to making the project economically feasible. Section 65915 of the California Government Code (Density Bonus statute) specifically requires that the Density Bonus or other incentives "contribute significantly to the economic feasibility" of the proposed project. The Coastal Commission rejected language offered by City staff which would have required an analysis of the economic contribution of a proposed modification toward the feasibility of a project as well as the impacts on coastal resources.

To resolve the issue, City staff attended three public hearings of the Coastal Commission and met jointly with Coastal Commission staff and attorneys, State Housing and Community Development attorneys and the City Attorney to no avail. It became clear that Coastal Commission staff was not going to change its restriction regarding only one modification.

In discussions with Coastal Commission staff, City staff unsuccessfully argued that the required findings for the applicable permits set a high standard and thereby provide assurance that coastal resources would not be adversely affected through any modification from applicable development regulations for affordable housing.

The modifications made by the Coastal Commission are at odds with the City's housing goals for several reasons:

1. The restriction to one additional incentive where all potential incentives would have an adverse impact on coastal resources does not balance the importance of a requested incentive or deviation with the economic feasibility of the project.
2. It ignores the economic difficulty of providing affordable housing in the Coastal Zone and the strategic importance of providing affordable housing in proximity to major employment centers in the Coastal Zone, as articulated in the draft Strategic Framework Element and draft Housing Element of the General Plan.
3. It ignores the series of findings of the City's multiple permits which must be made in order to assure protection of coastal resources.
4. It will be difficult to clearly determine which incentive has the least impact on coastal resources. This is a subjective decision which will tend to reduce use of the Density Bonus Program in the Coastal Zone.
5. There will be two versions of the Density Bonus ordinance in effect: one in the Coastal Zone and one outside of the Coastal Zone.
6. Implicit in its action is the belief that funding for affordable housing is virtually unlimited.

Options for the City

Planning staff gave careful consideration to a recommendation of accepting or rejecting the Coastal Commission's actions. Important points to consider are that currently the City has two

ordinances in effect and that extensive discussions with Coastal Commission staff did not yield significant movement on their part. Also, while the Coastal Commission's actions may be detrimental to the City's housing policy, they probably are not illegal, since the Density Bonus statute is primarily procedural.

In discussions with the State Department of Housing and Community Development regarding this issue, they have suggested setting up a working group process to include the environmental community, affordable housing advocates, HCD, community representatives, SANDAG and others to expand understanding of how the Density Bonus Program interacts with the Coastal Act and to increase use of the program in general. This process may result in a legislative proposal that has a realistic chance of adoption to strengthen the Density Bonus Program and clarify the relationship of the Density Bonus statute to the Coastal Act. In this circumstance, the Intergovernmental Relations Department and the City's lobbyists may be able to incorporate such legislation into a bill later this legislative year. The Intergovernmental Relations Department will be kept apprised of progress made in the working group process.

Accordingly, it is staff's recommendation that (1) the City Council accept the Coastal Commission's modifications; (2) introduce an ordinance to implement those changes; and (3) direct the Manager to work with the environmental community, HCD, affordable housing advocates, SANDAG and other affected interests to expand understanding of how the Density Bonus Program interacts with the Coastal Act and to increase use of the program in general.

ALTERNATIVE

Accept the Coastal Commission's modifications without setting up a working group process and without pursuing possible state legislation.

Respectfully submitted,

S. Gail Goldberg, A.I.C.P..... Approved by: P. Lamont Ewell
Planning Director Assistant City Manager

GOLDBERG/MZP

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachment: Letter from California Coastal Commission, dated December 15, 2000