



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: November 25, 2003 REPORT NO. 03-237

ATTENTION: Land Use and Housing Committee
Agenda of December 3, 2003

SUBJECT: Affordable Housing Density Bonus Regulations

SUMMARY

Issue – Should the Land Use and Housing Committee recommend revisions to the City's Affordable Housing Density Bonus Regulations (San Diego Municipal Code Chapter 14, Article 3, Division 7)?

Manager's Recommendation – Recommend that the proposed revisions be forwarded to the Community Planners Committee, and Housing Commission for input, Planning Commission for recommendation, and then to the City Council for adoption.

Other Recommendation – The Affordable Housing Task Force recommended that a density bonus for affordable housing of up to 50 percent be permitted in the City.

Fiscal Impact – None anticipated.

Environmental Impact – An addendum to the Land Development Code Environmental Impact Report will be prepared in accordance with CEQA, prior to proceeding to Planning Commission for this proposal.

Housing Affordability Impact – The goal of these revisions is to provide incentives to increase the supply of housing affordable to very low and low income citizens, senior citizens and moderate income condominium owners.

BACKGROUND

San Diego's existing density bonus regulations were adopted in 1981 and subsequently amended, most recently in 1999. They allow a density bonus of up to 25 percent for qualifying low income, very low income and senior housing projects, and additional second incentives which may be

approved at the City's discretion. These regulations were prepared in accordance with state law in effect at the time. They did not apply in the Coastal Zone because they were not approved by the Coastal Commission. Therefore, the state regulations on density bonus were in effect in the Coastal Zone.

Development proposals that utilize the density bonus program are required to enter into a legally binding agreement with the Housing Commission. Between 1999 and 2003 four density bonus agreements were entered into by the City of San Diego resulting in provision of 34 affordable housing units. One additional agreement that would add four more affordable units is currently in process.

In 2002 and 2003 new state regulations on density bonus were adopted that expanded the scope and potential incentives for density bonus (see Attachment 1). Since the new regulations took affect, there has been a significant increase in interest in the density bonus program, particularly for moderate cost condominiums. The revised regulations apply to all cities in the state including charter cities. The regulations were modified to spur more use of density bonus provisions by requiring cities to increase the incentives available and by making more projects eligible for a density bonus.

DISCUSSION

The changes to state density bonus law are as follows:

1. A density bonus of ten percent shall be granted to condominium projects in which at least 20 percent of the units are restricted to moderate income residents for a period of ten years. Previously, the density bonus program was restricted to projects with specified percentages of low and very low income residents and seniors.
2. Projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years. Previously, only projects that received a second incentive had to meet this requirement and others were only required to maintain affordable units for ten years.
3. The City must offer one additional incentive (second incentive) to all qualifying projects. Previously, the City was only obligated to offer second incentives to projects that entered into an agreement to preserve affordable units for 30 years, whereas, those that only agreed to preserve affordable units for ten years were not guaranteed a second incentive.
4. The City must offer a third incentive to qualifying projects that include on-site day care facilities that meet certain stipulations.
5. Applicants may now choose what second incentive they will receive and the City must grant that incentive unless specific findings are made that granting the request is not necessary or will have negative impacts on public health or welfare.

6. The revised state law also contains language making it easier for applicants to initiate judicial proceedings against a city if the city refuses to grant a requested density bonus or second incentive to qualifying properties and to recover attorney's fees and cost of suit.

Cities have the option of modifying their ordinances to reflect the new law or to allow applicants to apply for a density bonus following the state guidelines. For the past several months the City has been using both the new state law and existing City regulations to review density bonus applications. The state regulations take precedence in the event of a conflict.

While most cities in the state have not yet revised their local density bonus regulations, the Planning Department and City Attorney believe that it would be advisable to revise the City's regulations to eliminate confusion and potential conflict with the state law. Clarifying the regulations is particularly important because there is an increasing interest in using the density bonus that is newly available for moderate income condominiums. The state regulations do not preclude cities from instituting additional guidelines and clarifications regarding second incentives as long as they do not conflict with the intent of the state law. The staff's intent is to create City regulations that comply with the state law while providing additional clarifications and implementation procedures to guide applicants who are considering applying for a density bonus and additional incentives.

In accordance with the state regulations, the draft City ordinance (see Attachment 2) allows a basic density bonus of up to 25 percent to be granted through an administrative process if all applicable requirements are adhered to (ten percent for moderate cost condominiums). In addition, second incentives that would be appropriate to request are listed and can be approved through a Process 3 discretionary procedure (requiring public notice and Hearing Officer approval). These second incentives include an additional density bonus of up to 25 percent and deviations from applicable development regulations such as setback, parking, lot size, height or floor area ratio. The regulations set an upper limit on the overall density increase that can be allowed without need for a community plan amendment (50 percent for low income, very low income and senior projects, and 35 percent for moderate income condominium projects). The proposed ordinance does not preclude applicants from requesting other incentives that are not listed in the regulations or requesting a density bonus beyond the upper limit through a community plan amendment/rezoning or other discretionary action.

The recommended regulations also include provision for a third incentive if the proposed project provides day care facilities and is located in an area that lacks adequate day care facilities. All requests for a density bonus and/or additional incentives will need to be carefully analyzed to ensure that they would not have potential to create a threat to public health or safety. If a potential threat to public health or safety is found, the City can deny a request for a density bonus or second incentive. The proposed regulations will require Coastal Commission approval to be effective within portions of the City located in the Coastal Zone.

ALTERNATIVES

The draft regulations could be modified to increase the allowable density bonus that can be requested as a second incentive, through a Process 3 review procedure, for moderate income

condominium projects from 25-40 percent. If this alternative were adopted, all density bonus requests would have an upper limit of 50 percent density bonus without requiring a plan amendment/rezoning. The advantage of this alternative would be to offer more incentive to develop moderately priced condominiums. This could help to address the City's shortage of affordable for-sale housing.

Respectfully submitted,

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Approved: P. Lamont Ewell
Assistant City Manager

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Attachments: 1. [State Density Bonus Law](#)
 2. [Draft City Density Bonus Ordinance \(Strikeout-Underline\)](#)