



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: January 26, 2005 REPORT NO. 05-028
ATTENTION: Land Use and Housing Committee
Agenda of February 2, 2005
SUBJECT: Density Bonus Regulations
REFERENCE: Manager's Report Nos. 03-237 and 04-127

SUMMARY

Issues- 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) and Inclusionary Housing Regulations (Chapter 14, Article 2, Division 13)?

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

Fiscal Impact- None anticipated.

Environmental Impact- A tentative determination has been made by the Environmental Analysis staff that an addendum to the Land Development Code EIR No. 96-0333 will be required.

Housing Impact- The intent of these revisions is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors and moderate income condominium owners in accordance with state law.

BACKGROUND

State law requires cities in California to grant density bonuses to residential projects when the developers of those projects agree to restrict the price of a portion of the units at specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement. These regulations have been amended periodically as the state law has changed.

In October 2002 Governor Davis signed Assembly Bill (AB) 1866. This bill, which took effect on January 1, 2003, revised state density bonus law and was intended to increase use of the state density bonus program and increase the supply of affordable housing in the state. Passage of this bill resulted in San Diego's density bonus regulations becoming outdated and partially out of compliance with state law. Therefore, on December 3, 2003, the City Council's Land Use and Housing Committee directed the Planning Department and the City Attorney to make necessary revisions to the City's affordable housing density bonus regulations and forward them to the Community Planners Committee, Housing Commission and Planning Commission for input and recommendations and then to the City Council for adoption.

A draft ordinance was prepared. However, this effort was temporarily delayed when it became apparent that the state density bonus regulations were likely to again be significantly modified. In October, 2004 Governor Schwarzenegger signed Senate Bill (SB) 1818 into law. This bill, which was the second major revision to state density bonus law in two years, took effect on January 1, 2005. The intent of this bill, as with AB 1866, is to encourage more use of the state density bonus programs. (SB 1818 incorporated and revised the regulatory changes included in AB 1866.) The following is a summary of significant changes to state density bonus law that have been enacted during the past two years:

1. A new density bonus category has been added for moderate income for sale condominiums and planned unit developments. Previously, the density bonus program was limited to projects with specified percentages of low and very low-income residents and seniors.
2. A new density bonus category has also been added for projects that donate land to the City and make at least ten percent of units affordable to very low-income families.
3. The maximum basic state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was established from five percent to 35 percent depending on the proportion of units that will be affordable and at what affordability level they will be provided.
4. Rental projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years. Previously, only rental projects that received a second incentive had to meet this requirement and others were only required to maintain affordable units for ten years. For sale condominiums are not subject to the 30-year affordability requirement. Instead, upon resale, the City may recapture the increased value of the property.
5. The City must offer up to three incentives or benefits to all qualifying projects that request incentives. The number of incentives a project is eligible for depends on the number of affordable units being provided and the income group being targeted. Previously, the City was only obligated to offer incentives to projects that preserve

affordable units for 30 years whereas those that only preserve affordability for ten years were not guaranteed an incentive.

6. The City must offer an additional incentive to qualifying projects that include on-site day care facilities meeting specified conditions.
7. Incentives or benefits that must be offered to qualifying density bonus projects have been defined as being regulatory in nature. Applicants may choose what regulation(s) they seek to deviate from. The City must grant the regulatory incentive requested unless specific findings are made that granting the request is not necessary to provide the affordable units or will have adverse impacts on health and safety. Previously, the definition of incentives or benefits was less clear and the City interpreted it to include additional density bonuses beyond those required by the state.
8. The revised state law 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 additional incentive to qualifying projects.
9. The revised state law limits parking standards that a city can place on projects seeking a density bonus. No more than one space may be required for one bedroom and studio units and no more than two spaces may be required for two and three bedroom units. San Diego's existing parking regulations conform to these state requirements.
10. The revised state law clarifies that the regulatory incentives or benefits that are required to be provided to augment the basic density bonus include parking, height, floor area ratio, and setbacks.
11. Density bonus provisions now apply to condominium conversion projects as well as new construction in certain instances.

A copy of the most recent state legislation on density bonus (SB 1818) and a more detailed description of that legislation prepared by the California Housing Law Project are attached to this report (see Attachments 1 and 2).

DISCUSSION

The primary purpose of these revised draft local density bonus regulations (see Attachment 3) is to bring the City's regulations into conformance with state density bonus law and to incorporate suggestions previously made by the Land Use and Housing Committee.

On June 9, 2004, the Land Use and Housing Committee recommended adding a new City category of projects eligible for a density bonus. This ten percent ministerial bonus would be for projects that agree to build required inclusionary housing units on-site rather than paying an in-lieu fee. This type of bonus, which is proposed to be called an on-site building bonus, would be a local development incentive which is not required by the state density bonus law.

An applicant could apply for both the state density bonus and the on-site building bonus. The affordability and other requirements of the two programs differ and each would have to be met for the affordable units that an applicant intends to provide in accordance with these two programs. However, a maximum of 35 percent bonus from all density bonus programs (including the on-site building bonus) is allowed per state law without processing a plan amendment.

The state density bonus program requires that the basic density bonus that an applicant is eligible for be granted by right but the City is permitted to require discretionary review of the incentives or benefits that an applicant is eligible for. Despite the discretionary review process, the incentive(s) must be granted unless a finding of health and safety threat can be made. The Land Use and Housing Committee also recommended that the local review process for the density bonus incentives or benefits mandated by state law be increased from Process Three to Process Four to allow the possibility of appeal to City Council. This change has been made in the draft regulations although staff recommends retaining Process Three because a lesser process would help facilitate more use of the density bonus program.

The Housing Commission and Planning Department believe that the density bonus provided for moderate income ownership units in the state legislation is too limited to be used in a high cost location like San Diego. The bonus offered would not offset the cost of providing affordable units. 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 basic density bonus for projects that provide ten percent moderate income units be 20 percent rather than the five percent minimum provided for in the state legislation. This density bonus would increase by one percent for each additional one percent of moderate income units provided up to a maximum bonus of 35 percent.

The Housing Commission enters into agreements with density bonus applicants that stipulate the density bonus and affordability restrictions that will be placed on the property. Due to the new categories of density bonus and more complex regulations, the Housing Commission will prepare a procedures manual that will be designed to help applicants understand the process. The manual will contain information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, allowable rents and for sale prices, the interaction/relationship between the proposed on site building bonus and state density bonus provisions and Housing Commission fees for administering the program. A draft of this manual will accompany the draft ordinances that will be brought forward to the Housing Commission, Planning Commission and City Council for adoption.

The ordinances and accompanying manual will be designed to allow implementation in areas of the City outside the Coastal Zone 30 days after the second reading at City Council, while implementation in areas within the Coastal Zone will require approval of the measures by the Coastal Commission.

Respectfully submitted,

S. Gail Goldberg AICP
Planning Director

Approved: Patricia Frazier
Deputy City Manager

Betsy Morris
San Diego Housing Commission
President and CEO

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Attachments:

- [1. State Density Bonus Law \(SB 1818\)](#)
- [2. Description of SB 1818 from California Housing Law Project](#)
- [1. 3. Draft Revised City Density Bonus Ordinance](#)
- [4. Draft Revised City Density Bonus Ordinance \(Strike out/underline version\)](#)
- [5. Draft Revised City Inclusionary Housing Ordinance \(Strike out/underline version\)](#)
- [6. Moderate-Income Condominium Comparison Chart](#)