

DATE ISSUED: May 4, 2005 REPORT NO. 05-107

ATTENTION: Land Use and Housing Committee
Agenda of May 11, 2005

SUBJECT: Density Bonus Regulations

REFERENCE: Manager's Report No. 05-028

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), Inclusionary Housing Regulations (Chapter 14, Article 2, Division 13) and Housing Element of the Progress Guide and General Plan (General Plan).

Manager's Recommendation - Recommend that the Land Use and Housing (LU&H) Committee accept the proposed ordinance and General Plan revisions and direct staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption.

Other Recommendations:

1. On February 23, 2005, the Community Planners Committee (CPC) voted 11-1 to oppose the staff recommendation and to revise the City's draft density bonus regulations to not vary from or exceed the requirements of the state required Density Bonus Program.
2. On March 9, 2005, the Technical Advisory Committee (TAC) voted 7-0 to support the staff recommendation with the following additions:
 - The proposed On-Site Building Bonus should be accompanied by the regulatory incentives that are available to projects that are eligible for the state Density Bonus.

- The review process for incentives should be Process 3 or less.
 - A new local density bonus category should be added for accessible units that meet American National Standards Institute A 117.1 standards.
 - The moderate income condominium category should have the more generous bonus recommended by staff.
3. On March 17, 2005, the Planning Commission held a workshop on this issue. They asked a number of questions but did not provide any specific direction.
 4. On April 8, 2005, the Housing Commission considered this issue. They voted 4-0 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.

Fiscal Impact - None anticipated.

Environmental Impact - An addendum to the Land Development Code Environmental Impact Report No. 96-0333 is being prepared.

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

On February 2, 2005, the Planning Department and Housing Commission staff proposed a comprehensive revision to the City's density bonus revisions to bring them into conformance with recently revised state law and to create a program that would provide incentives for building more affordable housing in San Diego. The LU&H Committee requested that the proposal be presented to four other bodies for their input and then be brought back for consideration. This has now been done. The input from each of these bodies is described above in the Summary section of this report.

DISCUSSION

Aside from the input received from four reviewing bodies, the information in the Summary and Background sections of Manager's Report No. 05-028 (January 26, 2005) has not changed (see Attachment 1). The recommended ordinance changes would bring the City's regulations into conformance with state Density Bonus law.

The proposed ordinance changes include two provisions that conform to but go beyond minimum state requirements: 1) A ministerial on-site building bonus of ten percent is proposed for projects that agree to provide required inclusionary units on-site rather than paying an in lieu fee. This is proposed to spur more construction of affordable units throughout the City; and 2) A more generous bonus is recommended for moderate-income for-sale units than the minimum

required by state law. Staff believes that the minimum state required bonus for this category would be too limited to attract interest in providing moderate-income for-sale housing in a high land cost location like San Diego. Attachment 2 contains a chart comparing the minimum state proposed bonus to the proposed City bonus for this category.

The draft ordinance would increase the discretionary review process for the regulatory incentives that are required to accompany density bonus from Process 3 to Process 4, as recommended by the LU&H Committee at an earlier meeting. However, staff recommends retaining the existing Process 3 review for these incentives because state law does not allow discretion unless a legal finding of threat to health or safety can be made. Process 4 would allow incentives to be considered by Council, but state law does not provide Council the discretion to deny incentives unless a legal finding of threat to health or safety is made.

Although no substantive changes have been made, the Draft Affordable Housing Density Bonus Ordinance has been refined slightly since this issue was last discussed at LU&H (see Attachment 3). In addition, the City Attorney has advised that adoption of the proposed On-Site Building Bonus should be accompanied by an amendment to the City's Housing Element referencing this issue. Proposed language to be added to the Housing Element is as follows:

“On-Site Building Bonus - The Planning Department and Housing Commission will recommend City adoption of a ten percent ministerial density bonus, to be called an On-Site Building Bonus, that would be granted to developers who agree to build their required inclusionary housing units on-site rather than paying an in lieu fee. This would be an important incentive to encourage construction of affordable units in the near future.”

The recommendations to modify this proposal made by the CPC and TAC have been analyzed. Staff believes that the CPC recommendation to oppose the more generous proposed bonus for moderate-income for-sale units would likely remove the incentive to use a density bonus for housing in this category in San Diego. Staff supports the On-Site Building Bonus, also opposed by CPC, as a means to obtain affordable housing more quickly than it can be produced through City use of money collected from in lieu fees. The additional density bonus categories, proposed by TAC, would expand the scope of density bonus beyond the primary goal of fostering more affordable housing construction. The TAC suggestion, that the regulatory incentives that accompany the state Density Bonus categories should also be offered for the proposed On-Site Building Bonus, is not recommended because widespread deviations from long established building and zoning regulations could be problematical and would likely require more extensive public review and environmental analysis. Staff concurs with the TAC recommendation to adopt the On-Site Building Bonus and retain Process 3 as the review process for additional incentives.

The state Density Bonus regulations are complex and there are several categories of eligible projects. Therefore, the Housing Commission has drafted a procedures manual for the use of potential density bonus applicants to explain the procedures and requirements for each of the categories (see Attachment 4).

The draft regulations have been written so that they could take effect in non Coastal Zone portions of the City after Council adoption. However, these local regulations would not be

effective in the Coastal Zone until and unless the Coastal Commission approves them. Until that time, only the state Density Bonus Law would be applicable in the Coastal Zone.

If direction is given by LU&H regarding local density bonus regulations, the draft ordinances, amendment to the Housing Element, Housing Commission Procedures Manual and environmental documentation will be finalized, and Planning Commission and Council hearings will be scheduled as quickly as possible to consider adopting these regulations.

Respectfully submitted,

S. Gail Goldberg, AICP
Planning Director

Approved: Patricia T. Frazier
Deputy City Manager

GOLDBERG/CC/WML/ah

- Attachments:
1. [Manager's Report 05-028](#)
 2. [Moderate Income Condominium Comparison Chart](#)
 3. [Draft Revised City Density Bonus Ordinance \(March 24, 2005\)](#)
 4. [Housing Commission Density Bonus Procedures Manual](#)
 5. [Draft Revised City Inclusionary Housing Ordinance \(January 18, 2005\)](#)
 6. [State Density Bonus Law \(SB 1818\)](#)
 7. [California Housing Law Project SB 1818 Description](#)