



DATE: December 6, 2022

TO: Mayor and City Council

FROM: Assistant City Manager/Development Services Director

SUBJECT: Density Bonus Ordinance: Introduce an Ordinance Related to Text Amendments to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code for the Adoption and Updates to the City's Density Bonus Ordinance and Adopt a Resolution Supporting the Proposed Zoning Text Amendments and Approving an Addendum to the Hayward 2040 General Plan Environmental Impact Report for the Administration of a New Density Bonus Program in the City of Hayward

RECOMMENDATION

That the Council adopts a resolution (Attachment II) supporting the proposed Text Amendments to Chapter 10, Article 17 and Article 19, of the Hayward Municipal Code for the adoption and updates to the City's Density Bonus Ordinance, including an Addendum to the Hayward 2040 General Plan (Attachment IV) and introduces an Ordinance for Zoning Text Amendments to Chapter 10, Planning, Zoning and Subdivisions (Attachment III) of the Hayward Municipal Code regulating development seeking a Density Bonus.

SUMMARY

The City's existing Density Bonus Ordinance, adopted in 2005, does not conform with current State law. The current State law, which is required to be implemented by local jurisdictions, offers more density, more incentives, and additional relaxed parking requirements to projects that qualify for the density bonus. While the State's Density Bonus formula takes precedence, the City can change the formula to offer a higher density bonus and more incentives for certain projects, but under no circumstances can the City offer smaller density bonuses or fewer incentives than the State formula mandates. Staff is proposing to update the City's Density Bonus Ordinance to reflect four main changes:

1. Exceed the State's Density Bonus Maximum by 5% for all density bonus projects that provide on-site affordable units;
2. Exceed the State's Density Bonus Maximum by 10% for projects that provide on-site affordable units and target special populations;
3. Increase the number of incentives/concessions for projects that exceed the minimum on-site affordable housing requirements under the City's Affordable Housing Ordinance (AHO) in order to encourage development of more affordable units; and

4. Streamline the review of Density Bonus applications to allow new applications to be considered by the highest approving body.

These recommendations are based on previous feedback provided by the Council, Planning Commission, and the City's Homelessness Housing Task Force (HHTF). Staff is proposing to streamline the review of Density Bonus applications and is working on a policy for fee deferrals to offset upfront costs associated with affordable housing construction to help overall project feasibility. Staff believes that the recommended updates to the City's Density Bonus Ordinance will further incentivize affordable housing production and promote housing for several target populations as identified in the recently completed Displacement Study.

BACKGROUND

As mentioned above, the City's existing Density Bonus Ordinance¹ adopted in 2005 does not conform with current State law. As part of this project, the current Density Bonus Ordinance, contained in Chapter 10, Article 19 of the Hayward Municipal Code, will need to be repealed and replaced with a new Density Bonus Ordinance that, at minimum, complies with State guidelines and reflects the direction previously provided by Council that includes additional bonuses and concessions specific to Hayward. Additional details on the State's density bonus laws and the feedback received from the Council, Planning Commission, and HHTF are included below.

Summary of State Density Bonus

The Density Bonus Law² is about creating a package of incentives intended to help make the development of affordable and other special needs housing economically feasible. The main incentives include permitting a density increase beyond the local limits, providing incentives or concessions that reduce development costs, and waiving development standards that prohibit development at the approved density. Cities are required to grant a density bonus and other incentives and/or concessions to projects which contain one of the following:

- At least 5% of the housing units are restricted to very-low-income residents.
- At least 10% of the housing units are restricted to low-income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate-income residents.
- 100% of the housing units (other than manager's units) are restricted to very-low, low, and moderate-income residents (with a maximum of 20% moderate-income).
- At least 10% of the housing units are for transitional foster youth, disabled veterans, or unhoused individuals, with rents restricted at the very-low-income level.
- At least 20% of the housing units are for low-income college students in housing dedicated for full-time students at accredited colleges.

¹ Existing Density Bonus Ordinance:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART19DEB00R

² Meyers Nave Guide to California Density Bonus Law:

<https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law-2022.pdf>

- The project donates at least one acre of land to the city or county for very-low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobile home park, age-restricted to senior citizens (no affordable units required).

Projects that exceed the minimum requirements can get a higher density bonus and are eligible for additional incentives/concessions and waivers.

Joint City Council and Planning Commission Work Session. On February 1, 2022³, the Council and Planning Commission held a Joint Work Session to review and discuss the updates to the City's Density Bonus Ordinance for compliance with the State Density Bonus Laws and Residential Objective Standards. The Council and Planning Commission indicated support for:

- Creating an ordinance that is flexible enough to accommodate future changes by citing State law instead of codifying the full state legislation.
- Aligning the density bonus approval process with the standard entitlement process to streamline housing permitting.
- Offering incentives above what State law offers.
- Tailoring the Ordinance to meet Hayward's housing needs.
- Pre-defining approved incentives/concessions.

Based on the feedback from the Council and Planning Commission staff has developed a draft Ordinance that reflects changes in State law as well as streamlines the review of Density Bonus applications.

Some of the priorities identified by the Council and Planning Commission will be useful when negotiating community benefits related to some land use entitlements (Planned Development rezonings or General Plan Amendments). In some cases, the priorities identified increase development costs instead of decreasing them and therefore are not relevant to the density bonus. Details about the development priorities which are not included in the discussion of the density bonus project are included in Attachment V.

Homelessness Housing Task Force. On June 29, 2022⁴, the HHTF held a work session to review several options proposed by staff related to updates to the City's Density Bonus Ordinance. In general, the HHTF supported incentives for certain target populations (senior housing, student housing, and family housing), supported incentives for universal design, and supported additional concessions/incentives to help make projects more feasible.

In response to HHTF feedback, staff refined the recommendations and streamlined the proposed Ordinance to allow applicants more flexibility in obtaining these incentives and help

³ February 1, 2022, Joint Session Staff Report and Attachments

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5397460&GUID=B175606F-4591-4D2E-B41A-328BD292B038&Options=&Search=>

⁴ June 29, 2022, Homelessness Housing Task Force

<https://hayward.legistar.com/MeetingDetail.aspx?ID=984031&GUID=DE1B9C86-30F8-45F0-AF24-276EF93176B6&Options=info|&Search=>

administration of the density bonus program be more efficient for staff. Additional analysis of these components is detailed in the Discussion section below.

City Council Work Session. On October 18, 2022⁵, the Council held a work session to review staff's recommended updates to the Density Bonus Ordinance (as detailed in the Discussion section below). Council expressed overall support for proposed updates but highlighted their concern for granting any additional concessions that further reduce parking requirements beyond what the State already allows and highlighted the need for additional teacher and faculty housing. In response to Council feedback, staff has detailed the options to support additional teacher/faculty housing and included more details about the parking requirements in the sections below.

Teacher/Faculty Density Bonus. As previously described, the Council expressed a desire to include teachers or school faculty as a target population to assist those individuals with additional housing options. Although City staff is not proposing to provide specific incentives for teachers or school faculty as part of this Density Bonus project, new State legislation (AB2295), effective January 2024, will make it easier for school districts to build affordable housing for their teachers and staff. Specifically, AB2295 will allow staff housing to be built on any property owned by a school district without requiring the district to request zoning changes from city or county officials if the housing development satisfies certain conditions, including other local objective zoning standards, objective subdivision standards, and objective design review standards. The legislation deems a housing development that meets these requirements consistent, compliant, and in conformity with local development standards, zoning codes or maps, and the general plan. In addition, the legislation exempts a housing development project subject to these provisions from various requirements regarding the disposal of surplus land. Currently most of the school district property in the City of Hayward is zoned for residential uses and could accommodate new housing units but contain a Public Quasi-Public General Plan land use designation, which does not allow for residential uses.

In October 2022, the Hayward Unified School District sent a Notice to the City and other interested stakeholders announcing the potential sale or lease of eight (8) district owned properties, which are currently located in zoning districts that allow for residential uses, but contain a Public Quasi-Public (PQP) General Plan land use designations. Per AB2295, each of these properties could be developed for additional teacher, faculty, or affordable housing without a General Plan Amendment so long as the project complies with certain conditions, detailed in the legislation. Until such time as new faculty or teacher housing is built on school district property, staff will continue to promote all other affordable housing available to teachers and school faculty.

Density Bonus Parking Requirement. As noted earlier, the Council expressed concern with additional reductions to the amount of parking required to qualify for density bonuses. California Government Code Section 65915(p) establishes certain maximum parking ratios for density bonus projects. A project that meets the applicable ratio under the Government

⁵ City Council Work Session 10.18.22

<https://hayward.legistar.com/MeetingDetail.aspx?ID=999763&GUID=DEF02F36-948B-42C3-A6D3-BDC6F5E6BA08&Options=info&Search=>

Code may take advantage of the ratio without using a concession or waiver. If a project requires a further reduction in parking standards from what the local agency otherwise requires, then that further reduction must be sought as a concession or waiver.

The reduced parking standard generally applies to projects that are 100% affordable and/or located near a major transit stop. In the event an applicant is requesting to provide fewer spaces than State law allows, the request would qualify as an incentive or concession and the applicant would be required to provide reasonable documentation to demonstrate that the request qualifies per State law. While the City is somewhat limited in rejecting these requests, staff has included a requirement in the draft Ordinance that requires the applicant provide a Transportation Demand Management (TDM) plan to help reduce parking demand. To date, the City has not received any requests or approved any additional parking reductions beyond what the State already allows as part of a density bonus project and in fact many of the recently approved Density Bonus projects, including the Maple and Main, have proposed parking that meets or exceeds the City's Off-Street Parking Regulations in order to meet resident needs.

In the event the Council would like to impose a higher parking requirement, State law does allow cities to require a higher parking ratio for certain housing projects *if* the higher parking ratio is supported by a specific parking study that demonstrates a higher parking requirement is necessary. As previously mentioned, staff is currently working with a transportation consultant to complete a parking analysis as part of the Residential Design Study and expects that analysis to be completed in early 2023. Once completed, staff plans to schedule work session(s) with the Planning Commission and Council to present those findings and discuss next steps.

Planning Commission Work Session. On November 10, 2022, the Planning Commission held a work session to discuss and provide feedback to Council on the proposed Density Bonus Ordinance revisions. The Planning Commission was generally supportive of the proposed revisions including the flexibility that the Ordinance would provide to developers to ensure feasibility of residential development projects providing affordable units. The Planning Commission requested clarification from staff at the meeting on the increased density bonus above the requirements in State law, the applicable parking ratios, and requested additional policy clarification on how fee deferrals and fee waivers would be applied. The Planning Commission also recommended that staff compare the proposed Ordinance to other jurisdictions and routinely monitor the City's program to ensure the City remains competitive with surrounding jurisdictions and is meeting the City's goal to produce more on-site affordable units. When developing the draft Ordinance, City staff and the City's consultant did review Density Bonus Ordinances from other jurisdictions and confirmed that most cities defaulted to the State's Density Bonus law without providing any additional density bonus increases, concessions, or incentives. Following feedback from the Council, HHTF, and Planning Commission, staff believes the additional density increases proposed by the Hayward program will further incentivize housing production and result in an increase in the number of on-site units provided.

DISCUSSION

Based on the feedback from the Council, Planning Commission, and HHTF, staff is proposing four main changes from the City's existing Density Bonus Ordinance that will provide additional cost saving incentives that could increase the percentage of on-site affordable housing and/or deepen the level of affordability of affordable units included in density bonus projects. Staff believes that the recommended density bonus increases in excess of the State's requirements, coupled with the potential for additional incentives/concessions will encourage the development of on-site affordable units in the City, streamline the review of applications, and help incentivize construction of housing in Hayward. The proposed Density Bonus Ordinance is included as Attachment III and summarized in Table 1 below.

Table 1: Existing State Density Bonus vs. Proposed Hayward Density Bonus Summary

Target Population Served	State Required Restricted Affordable Units	State Maximum Density Bonus	Hayward Maximum Density	Hayward Maximum Density Increase for Special Targeting
Very Low Income	15%	50%	55%	60%
Low Income	24%	50%	55%	60%
Moderate Income	44%	50%	55%	60%
Foster Youth/Disabled Veterans/Unhoused Individuals	10% restricted at very low Income	20%	25%	30% (15% restricted at very low income)
College Students	20% Low-Income Student	35%	40%	45% (25% restricted low-income students)

Additional Density Bonus for On-Site Affordable Units

As shown in Table 1, staff is recommending a 5% density bonus increase over the maximum density bonus for projects that provide on-site affordable units and meet the State's criteria. Not only will this option support the construction of additional housing to assist the City in meeting its Regional Housing Needs Assessment (RHNA) requirement but will also create additional affordable units throughout the City, which is essential given the ongoing housing crisis throughout the State.

Additional Density Bonus for Special Target Populations

Staff is also recommending an additional density bonus for projects that both meet the State's criteria for a maximum density bonus and target special needs populations. The State Density Bonus Law currently incentivizes the development of senior housing, student housing, and housing for foster youth, disabled veterans, and unhoused individuals by allowing a 20 to 35 percent increase in density and, in some cases, without inclusion of any affordable housing.

Based on feedback from the Council, Planning Commission, and HHTF, direction was provided to create additional density bonuses for housing that accommodate certain target populations, including the following:

- Rental projects that provide more than 20% of the rental units for large families (3+ bedrooms).
- Projects that incorporate Universal Design features in more than 20% of the units.
- Senior housing projects as defined by Government Code Section 65915, as it may be modified from time to time.
- College student housing projects as defined by Government Code Section 65915, as it may be modified from time to time.
- Projects with units set-aside for foster youth, disabled veterans, or individuals experiencing homelessness as defined by Government Code Section 65915, as it may be modified from time to time.

The feedback received is also consistent with the findings of the Displacement Study⁶, which identified a need for additional housing for certain populations. To further incentivize the construction of housing for these target populations, staff is recommending an additional 5% increase, in addition to the 5% baseline increase, for a 10% total density bonus increase for projects that serve these populations, which would be over and above the State's maximum. Staff does not recommend increasing the density bonus to encourage the development of affordable senior housing units instead of market rate senior projects. The recommended density bonus increases for Special Target Populations are shown in Table 1 above and detailed in Attachment III.

Increase the Number of Incentives/Concessions for On-Site Affordable Units

In addition to the recommended increases in Density Bonus for projects that provide on-site affordable units, staff is also recommending projects receive an additional incentive or concession to help project feasibility as shown in Table 2 below.

Table 2: Existing State vs. Proposed Hayward Incentives/Concessions

No. of Incentives/ Concessions Required by State	Proposed No. of Incentives/ Concessions	Percentage of VLI Units	Percentage of LI Units	Percentage of MI Units
1	1*	5%	10%	10%
2	3	10%	17%	20%
3	4	15%	24%	30%
4	5	100% (LI/VLI) or 100% (MI 20% /LI 80%)		

*The first tier is not increased because compliance with the Affordable Housing Ordinance's on-site affordable housing requirement make the project eligible for one incentive/concession.

Per current State law, cities are required to provide one or more incentives or concessions to each project which qualifies for a density bonus (except for market rate senior projects with no affordable units, and land donated for very-low-income housing). A concession or incentive is defined as:

⁶ Displacement Study:

<https://www.hayward-ca.gov/sites/default/files/documents/Hayward-Displacement-Study-w-Appendix.pdf#:~:text=The%20City%20of%20Hayward%20Displacement%20Study%20provides%20a,analysis%2C%20the%20study%20compares%20Alameda%20County%20and%20Hayward.>

- A reduction of site development standards or a modification of zoning code or architectural design requirements, such as a reduction of minimum square footage requirements;
- approval of mixed-use zoning; or
- other regulatory incentives or concessions which result in identifiable and actual cost reductions.

The number of required incentives/concessions is based on the percentage of affordable units. The City is required to grant the incentives/concessions proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions; would cause a public health or safety problem; would cause an environmental problem; would harm historical property, or would be contrary to law. A concession is supposed to result in a cost savings for affordable housing, and the City can deny a concession if it finds that a requested concession will not result in a cost savings for affordable housing. In the event the City does deny a request for incentive/wavier, the City has the burden to prove the absence of cost savings; however, the City can require the applicant submit reasonable documentation demonstrating such a savings. Staff has added this requirement to the draft Ordinance (Attachment III) in order to ensure that any concession being requested is tied to affordable housing production.

In response to recommendations from the Council, Planning Commission, and HHTF, staff has revised the previous approach for pre-defined incentives to provide applicants with more flexibility and be less prescriptive, as summarized in Table 2. For projects that are 100% affordable or exceed the City's Affordable Housing Ordinance requirements by providing more on-site affordable units or units that provide deeper levels of affordability staff is recommending that one additional incentive/concession be provided.

Streamlined Density Bonus Process

To apply for a density bonus under the City's current Ordinance, an applicant must submit a Density Bonus Application along with a description of what is being requested, why the project qualifies, pay the planning entitlement fee (as specified in the Master Fee Schedule), and provide any supporting and reasonable documentation to demonstrate the project qualifies for a density bonus. All Density Bonus applications in the City are reviewed and approved by the Planning Commission by default. However, the application moves to the Council if the project involves another permit or entitlement requiring Council approval such as a rezoning or General Plan Amendment. In the latter case the Planning Commission makes a recommendation to the Council regarding project approval or denial and adoption of any applicable CEQA documents including a recommendation on the density bonus request. As part of the Ordinance update staff has updated the approving authority so that applications received under this new Ordinance could be considered by the highest approving body which in some cases may be an administrative staff approval. Streamlining density bonus applications will save the developer and City staff time and money, and it supports the goals identified in the two housing work plans adopted by Hayward to incentivizing housing production.

Fee Waivers (*impact fees such as traffic and park fees*). Council has already approved waiver of park fees and traffic impact fees for 100% affordable housing projects and reduction of fees for the on-site affordable housing units provided as part of a mixed-income project. Developers would not need to request this concession, but staff would promote this incentive to incentivize on-site affordable housing.

Fee Deferral (*utility, sewer, water, and infrastructure connections*). Although utility fee deferral is not part of the actual Municipal Code update, staff is proposing, deferral of some utility connection fees that would help off-set some upfront financial obligations that applicants are required to pay. Currently, utility connection fees are due prior to installation of the meter and are necessary for maintaining infrastructure. These fees could be deferred for the affordable units until issuance of certificate of occupancy and would be made a condition of project approval. Deferral of fees saves the developer the cost to finance the fees. Following Ordinance adoption, staff will continue to work with the Public Works Department to determine if this remains a viable option and to ensure that risk of non-payment is minimized. Staff envisions this would be accomplished by requiring the developer to sign an agreement that would be recorded to title of the property along with a lien or deed of trust. This would prevent sale of the property prior to payment of the connection fee due to the City. Staff can promote this option to developers in the event on-site affordable units are provided and fee deferrals are necessary to make a project feasible.

Environmental Review

In 2014, the City certified the EIR for the *Hayward 2040 General Plan*. The General Plan represents the community's view of its future and expresses the community's conservation and development goals through the year 2040. An Addendum to the General Plan EIR (Attachment IV) was prepared pursuant to Section 15164 of the CEQA guidelines which states, "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred."

The proposed modifications to the General Plan EIR described in the attached Addendum would not require major revisions to the General Plan EIR due to new or substantially increased significant environmental effects. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the General Plan EIR and would have no new or more severe significant effects and no new mitigation measures are required. Therefore, no subsequent or supplemental EIR or further CEQA review is required.

STRATEGIC ROADMAP

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap. This agenda item supports the Strategic Priority of Preserve, Protect and Produce Housing for all. Specifically, this item relates to the implementation of the following:

- Project 4: Implement housing incentives and production work plan in accordance to state housing limits
- Project 4b: Amend Density Bonus Ordinance

FISCAL IMPACT

The budget for this project is \$75,000, which is covered and paid through a State Housing and Community Development SB2 Planning Grant awarded in 2019. At this time, staff does not anticipate any additional costs associated with this project or fiscal impacts to the City's General Fund.

PUBLIC CONTACT

Outreach to Housing Developers. Revisions to the Density Bonus will only be effective if the proposed changes are useful to developers. In response to the Council and Planning Commission's direction, staff conducted outreach to twenty housing developers, including affordable/non-profit, and market-rate housing developers, which consisted of a survey with the following seven questions emailed to the developers on May 6, 2022, with interviews scheduled from May 9, 2022, to May 18, 2022:

- What cost savings concessions would incentivize more affordable units, deeper affordability or some of the other City Priorities listed below?
- Would you like to have more concessions than is currently allowable under State Density Bonus Law?
- Do you have any experience in other cities using expedited entitlement process - explain how that process works compared to our normal process?
- Would it be beneficial to have a density bonus that exceeds 50% for mixed-income projects?
- Do you have any examples of fee waiver, reduction, or deferral programs that have been implemented in other Cities?
- Would a Density Bonus encourage you to set aside 20% of the units for students?
- Would increase incentives improve your ability/desire to provide on childcare facility? If so, what would that look like?

Of the twenty housing developers, three affordable/non-profit housing developers and three market-rate developers responded to staff's survey and were interviewed. Depending on the type of developer (market-rate, affordable, non-profit), the challenges and suggestions for development of housing vary. A summary of the feedback received from those interviews is included as Attachment VI.

NEXT STEPS

If the Council introduces the attached ordinance this evening, a second reading and adoption will be brought back during a regular meeting scheduled in January 2023. If approved, the proposed text amendments will be effective 30 days after adoption.

Prepared by: Jeremy Lochirco, Planning Manager
 Christina Morales, Housing Division Manager
 Rozalynne Thompson, Senior Planner

Recommended by: Jennifer Ott, Assistant City Manager/Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', with a long horizontal stroke extending to the right.

Kelly McAdoo, City Manager