



DATE: February 1, 2022

TO: Mayor, City Council, and Planning Commission

FROM: Assistant City Manager/Development Services Director

SUBJECT: Density Bonus Update: Review and Discuss the Updates to the City's Density Bonus Ordinance for Compliance with State Density Bonus Laws

RECOMMENDATION

That the Council and Planning Commission provide feedback and guidance on the Density Bonus Ordinance update. In particular, staff recommends that Council and the Planning Commission provide feedback on whether they would like to follow the State's formula for determining the density bonus afforded to projects, or whether they would like the City to offer additional density bonuses or incentives for certain types of projects such as senior housing or housing in proximity to transit.

SUMMARY

Following adoption of the City's Density Bonus Ordinance in 2005, the State of California has made significant and numerous changes to density bonus law to incentivize affordable housing and help increase housing production. In order to comply with these changes, the City must repeal and replace its existing density bonus ordinance. Additionally, to improve housing stability for Hayward residents, the Council has adopted work plans and projects as part of the Strategic Roadmap that intend to preserve, protect, and produce housing. Updating the City's Density Bonus Ordinance is one of those priority projects identified in the Strategic Roadmap.

As part of our Ordinance update, the State has determined a default formula for what density bonus, number of incentives, and parking standards a project qualifies for, based on the share of affordable or senior units included in the project. To be consistent with State law, the City must repeal the existing Ordinance and adopt a new Ordinance that establishes a procedure for processing density bonus applications using the State's formula. If the City desires to go above and beyond what is required by the State, the City may tailor the State's formula to further incentivize certain types of housing. Suggestions for consideration are projects that include senior housing and/or are in proximity to public transit such as the BART line.

BACKGROUND

The current Density Bonus law (California Government Code Sections 65915 – 65918) entitles a property owner or developer to build more housing units than a local zoning ordinance would otherwise allow, if they reserve a share of the units for low income or senior residents. This law can result in a minimum density bonus of 20% - for projects that reserve at least 5% very low income, 10% lower income, or 10% moderate income for sale units - and up to an 80% density increase for projects in which all units are affordable (or a three-story height increase with unlimited density within that envelope, in the case of 100% affordable projects within ½ mile of a high-quality transit stop). Projects that qualify for a density bonus also may qualify for up to four incentives and reduced parking requirements. The density bonus may be claimed by developers and property owners even if a local jurisdiction has not yet updated its density bonus ordinance to be compliant with the State directive.

To improve housing stability for Hayward residents, Council has adopted work plans (Preserve, Protect, Produce Housing for all Priority of the Strategic Roadmap and the Incentives to Housing Production Work Plan) that intend to preserve, protect, and produce housing. Both plans direct staff to not only conform Hayward Density Bonus with state law and but also explore density bonus greater than maximum.

In response to recent State housing legislation, the City of Hayward sought out and was awarded a SB 2 Planning Grant by the California Department of Housing and Community Development. Of the \$310,000 awarded to the City, \$235,000 is earmarked for the Objective Standards component of this project with the remaining \$75,000 dedicated towards updating the City's Density Bonus Ordinance in order to bring it into compliance with State law.

Existing Density Bonus Ordinance. The City's existing Density Bonus Ordinance was adopted in 2005. This ordinance aimed to ensure that land developed for market rate affordable housing would also provide incentives for projects that included affordable housing.

The Density Bonus Ordinance offered developers or property owners a bonus ranging from 5-35% density increase, depending on how many affordable housing units the developer included in a project. Per the Ordinance, the following are minimum thresholds which qualify for a density bonus:

- 10% of units set aside for lower income households
- 5% of units set aside for very low-income households
- Senior Citizen Housing Development or Mobile Home Park
- 10% moderate income for purchase (in a common interest development)
- Projects that donate land to the city for affordable housing development, in line with the requirements described in the ordinance
- Projects that include an on-site childcare facility (the project should be located in a neighborhood that lacks childcare facilities)
- Projects that convert apartments to condominiums that will make at least 33% of units affordable to moderate income households

In addition to a density bonus, housing projects qualify for up to three incentives, depending on how much affordable housing they provide. An incentive (also called a concession) can be a reduction in development standards, including a reduction in setback or square footage

requirements, or a reduction in required parking. An applicant may request another type of incentive if they can justify why that incentive is necessary.

California Density Bonus Law Amendments. Since 2005, the State of California has amended their density bonus law several times through the following legislation to expand and promote opportunities to provide affordable housing:

- SB 1227 (adopted in 2018): provides density bonuses for projects that include student housing.
- AB 1763 (adopted in 2019): strengthens the density bonus considerably by allowing up to an 80% density bonus and a fourth incentive if 100% of the units are deed restricted for lower income households. If the development proposed 100% affordable units within a half-mile of a major transit stop, this bill allows an additional 3-story height limit increase and unlimited density within that building envelope.
- AB 2345 (adopted in 2020): increases annual reporting requirements and strengthens the density bonus, including by allowing developers to request an elimination of all parking requirements for 100% affordable developments within a half mile of a major transit stop.
- SB 728 (adopted in 2021): clarifies requirements for the purchaser of a “for-sale” moderate income unit that qualifies the developer for a density bonus.
- SB 290 (adopted in 2021): grants incentives to projects that include 20% of the total units for lower-income students in a student housing development. It also requires the local agency to report on student housing projects receiving density bonuses as part of a housing element annual report.
- AB 634 (adopted in 2021): permits local agencies to require an affordability period longer than 55 years to qualify for the incentives provided for under the State Density Bonus Law.

Current State Density Bonus Law. The current State density bonus law offers applicants a 20% to 80% density increase, depending on how many affordable or senior housing units a developer includes in a project. Additionally, for projects that provide 100% affordable units, applicants are allowed unlimited density bonus and an additional three stories of building height if located near a major transit stop. Under the current State law, the following are the minimum thresholds that qualify a project for a density bonus:

- 5% of units set-aside for low income households
- 10% of units set-aside for lower income households
- 10% of units for-sale to moderate income households
- 100% of units set-aside for very low, lower, and moderate-income (with maximum 20% moderate)
- 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low-income level
- 20% of units for low-income college students in housing dedicated for full-time students at accredited colleges
- The project donates at least one acre of land to the city for very low-income units
- 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)

In addition to the density bonus, projects can also qualify for up to four incentives, plus relaxed parking requirements. Jurisdictions are required to develop a procedure for processing density bonus applications, and the State law supersedes more conservative formulas specified in local density bonus ordinances. A more detailed comparison between the City's Ordinance and the State's Density Bonus laws are discussed below.

DISCUSSION

Comparison of the City's Density Bonus Ordinance and the State's Density Bonus law. As previously noted, the City's existing Density Bonus Ordinance from 2005 does not align with current State law. The current State law offers more density, more incentives, and additional relaxed parking requirements to projects that qualify for the density bonus. The list of qualifying projects for the Hayward Density Bonus Ordinance also differs from the list of projects that qualify for the State Density Bonus Ordinance. As such, the State's Density Bonus formula takes precedence; however, 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. For example, if the City wants to incentivize and promote senior housing, the City could offer senior housing projects a higher density bonus instead of the standard 20% density bonus that the State requires, but in order to provide that bonus, the City must update our local Ordinance to include that provision. A summary comparison is shown in Table 1 below.

Table 1: Comparison Hayward's Density Bonus Ordinance vs. State Density Bonus law

	<i>Amount of Bonus Allowed</i>	<i>Maximum # of Incentives</i>	<i>Misc.</i>
Hayward Density Bonus Ordinance	5 to 35% Density Bonus	1 to 3 incentives (parking counts as one incentive)	
California Density Bonus law	20 to 80% Density Bonus	1 to 4 incentives	Relaxed parking requirements

Note: Under current California law, any development standard that would prevent a developer from achieving either the density bonus, incentives, or parking requirements they are entitled to, is waived. The above table does not capture all cases – for instance, a 100% affordable project within ½ mile of public transportation qualifies for a waiver of the parking requirements fully waived, a 3-story height increase, and an unlimited density increase within that building envelope.

In addition to bringing Hayward's density bonus formula into compliance with the state's formula, repealing and replacing the density bonus ordinance will help Hayward come into compliance with the State's requirement that all jurisdictions develop a procedure for processing density bonus applications. Hayward's existing procedure does not include a timeline for processing the application and puts the burden of proof (that an incentive provides cost savings) on the applicant rather than the City.

Examples from Other Jurisdictions. Most jurisdictions in Alameda County have adopted Density Bonus ordinances or are in the process of drafting an ordinance. Some jurisdictions, like Oakland, have outdated density bonus ordinances, but are only updating to reflect the thresholds adopted by State law. Because State law changed significantly in 2021, many of these measures were passed very recently and there is limited data on their efficacy. Below are a few examples of what other jurisdictions have adopted as part of their Density Bonus Ordinance:

1. *Pre-define preferred incentives to expedite staff approval (San Jose)*

Under the State Density Bonus Law, jurisdictions may reject a developer-proposed incentive if the City can show that it:

- Would not result in identifiable and actual cost reductions;
- Would have a specific adverse impact on health and safety, or;
- Would be contrary to state law.

San Jose's Density Bonus Ordinance pre-defines four incentives that will not be deemed to have an adverse impact on public health or safety. By specifying pre-approved incentives, they hope to speed the review of density bonus applications that request these incentives and exert some control over which incentives developers seek. Developers may still request other incentives, but any incentive not specified in the ordinance will be reviewed by the city to determine its impact, which may delay the permit approval. The San Jose ordinance does not specify the approval authority for density bonus applications as the approval authority for a density bonus application is the same as any non-density bonus project.

2. *Create guidelines to help staff and applicants define incentives and process applications (Berkeley)*

The City of Berkeley's Density Bonus Ordinance has created guidelines for what will constitute one incentive (i.e. exceedance of a single dimensional standard, such as building height, which would otherwise require approval by the zoning officer, Council, or zoning administration board counts as one incentive).

3. *Create an ordinance that is flexible enough to accommodate future changes to state law.*

Many cities in Alameda County have density bonus ordinances that thoroughly outline the state density bonus formula at the time that they were written. Because the State has frequently amended the density bonus law in the last several years, the following jurisdictions have density bonus ordinances that are out of date: Livermore, Emeryville, Albany, Oakland, San Leandro, Fremont, and Alameda. Ordinances are more likely to remain in compliance if they only cite the State formula without thoroughly describing it within the ordinance, and if it's noted that that the formula is subject to future changes, per changes in state law. However, it is possible to list the full formula in the ordinance and just update it frequently as required by State law. Both San Mateo and Palo Alto have up-to-date ordinances that list the full density bonus formula, which they updated in 2021.

4. *Offer additional incentives for desirable development types (Sonoma County, El Segundo)*

Cities are entitled to offer developers a larger density bonus than the default State law formula if they wish. For example, Sonoma County offers a 100% density bonus to projects that provide 40% low-income housing. Under State law, the same project would only get a 50% density bonus.

Offering a larger bonus to certain types of projects can add additional incentive for those development types. El Segundo is considering offering an additional density bonus to senior housing projects to encourage developers to provide senior housing, a need in their city. The current Hayward Density Bonus Ordinance provides a density bonus for projects that will

include on-site childcare facilities. There is an opportunity in Hayward with this new Density Bonus ordinance to potentially offer additional density or more incentives to projects that provide student housing or lower income ownership housing.

Review and Approval of Density Bonus Applications. 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, an administrative fee as specified in the Master Fee Schedule, and several other required documents. 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.

If Council and Planning Commission determine it is appropriate, applications under this new ordinance could be considered by the lowest approving body, which in straightforward cases may be an administrative staff approval. Streamlining density bonus applications could save the developer and City time and money. It could support the goals identified in the two housing work plans adopted by Hayward by incentivizing housing production.

Summary. As discussed in this report, the City needs to update its Density Bonus Application to bring it into compliance with State Law. Staff is interested in direction from the Planning Commission and Council on the following questions:

- Does the Council and Planning Commission prefer to follow the State's density bonus formula with no changes, or should the City offer additional incentives for certain types of housing? If so, what types of housing should the ordinance further incentivize (i.e., student, lower income ownership, senior)?
- Does the Council and Planning Commission want to align the density bonus approval process with the standard entitlement process to streamline permitting?

STRATEGIC ROADMAP

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap:

1. Preserve, Protect & Produce Housing
2. Grow the Economy
3. Combat Climate Change
4. Improve Infrastructure
5. Improve Organizational Health
6. Support Quality of Life

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 (s):

Project 4: Implement housing incentives and production work plan in accordance to state housing limits

Project 4b: Amend Density Bonus Ordinance

FISCAL IMPACT

The proposed budget for this project is \$75,000, which will be covered and paid through the HCD 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.

NEXT STEPS

Following the work session with the Council and Planning Commission, staff will work with the consultants to draft a new ordinance to conform with State law and incorporate feedback and recommendations of Council and the Planning Commission. Staff and the consultant team expect to bring the new draft ordinance to the Homelessness and Housing Task Force and the Planning Commission for recommendation in April with Council consideration in May 2022. Finally, the consultant team will create two informational documents to aid staff in processing applications: a developer checklist and an informational report in word document form which can be updated in response to future state laws.

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