



DATE: June 29, 2022

TO: Homelessness-Housing Task Force

FROM: Acting Assistant City Manager

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 Task Force provides feedback and guidance on the Density Bonus Ordinance update. In particular, staff recommends that the Task Force provides feedback on whether they would like to follow the State's formula for determining the density bonus afforded to projects and offer the additional density bonuses or incentives for certain types of projects, such as senior housing and student housing in proximity to transit, as discussed in this staff report.

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. 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.

This discussion evaluates the need for and ways the City could use the density bonus to incentivize student housing, senior housing, housing for all through universal design, and housing for large households. Additionally, it discusses ways to potentially increase on-site affordable housing through use of the density bonus and identifies pre-defined incentives that may be useful for developers to reduce their development costs. It is important to note that some priorities, while creating housing opportunities for specific target populations, may discourage the inclusion of on-site affordable housing so any additional concessions or incentives offered by the City should carefully weigh the pros and cons of such action.

BACKGROUND

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. 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.

Summary of State Density Bonus

The Density Bonus Law¹ 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.

Density Bonus: Cities are required to grant a density bonus and other incentives and/or concessions to housing 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 homeless persons, 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.
- 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.

Incentives and Concessions: Cities are also 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:

- A reduction of site development standards or a modification of zoning code or architectural design requirements, such as a reduction or minimum square footage requirements; or
- Approval of mixed-use zoning; or

¹ Meyers Nave Guide to California Density Bonus Law:
<https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law-2022.pdf>

- 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.

Joint Work Session - City Council and Planning Commission. On February 1, 2022², the City 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. City Council and Planning Commission indicated support of:

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

Based on the feedback from the City Council and Planning Commission, staff has clear direction on items one and two listed above and will work to create flexibility in the Ordinance to reflect changes in State law as well as streamline the review of Density Bonus applications at the highest approving body. The purpose of the following discussion is to receive feedback on options to accomplish items three, four, and five listed above.

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

DISCUSSION

Based on the feedback from City Council and Planning Commission, staff has identified specific target populations that the bonus could prioritize and cost saving incentives that could increase percentage of onsite affordable housing or deepen the affordability level served. Along with proposed incentives or prioritizations, staff has identified related tradeoffs. Because the current density bonus is so robust, mixed income development projects have yet to maximize the total benefits allowed. Of approved mixed income projects, the largest

² February 1, 2022, Staff Report and Attachments

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

density bonus is 15%, which will provide 20% of the units affordable to moderate income households. Three 100% affordable housing projects have maximized the benefits under the current Density Bonus, receiving 80% increase in density or more. With that in mind, the following analysis discusses how the city can go above and beyond state law to incentivize housing for specific target populations, further incentivize affordable housing, or create pre-defined incentives/concession to decrease development costs to create more housing.

Targeting Special Needs Population

The State density bonus currently incentivizes the development of senior housing, student housing, and housing for foster youth, disabled vets, and people experiencing homelessness by allowing a 20 to 35 percent increase in density and in some cases without any affordable housing targets. Based on the feedback from Council and the Planning Commission and consistent with the findings in the City's Displacement Study, there is interest in incentivizing housing for people with disabilities, affordable student housing, further prioritizing senior housing. Additionally, staff has identified a need to prioritize housing for large households based on preliminary findings from the Housing Element and supported by the City's Displacement Study. The following are examples of how the City can create or improve incentives for specific target populations.

Student Housing.

- **Need:** 35% of California State University East Bay students are Low-Income
- **Existing Incentives:** Allows for a 35% increase in density and one development incentive/concession that reduces costs for student housing that restricts 20% of the units for low-income students. Unlike the maximum income requirements for other forms of affordable housing, resident income levels are determined through the student's eligibility for the state's Cal Grant financial aid program. The City has not received any applications for the development of student housing since the adoption of the current state density bonus.
- **Possible further incentives:** If the City chooses to further incentivize student housing, it could potentially increase feasibility by increasing the density bonus from 35% to 50% and/or allowing one additional incentive/concession of development standards for a total of two incentives/concession. Alternatively, the City could require a deeper affordability level for half of the affordable units, but no financial feasibility analysis has been conducted to determine if the deeper income targeting is feasible.

Senior Housing.

- **Need:** The City's Displacement Study documents that there was a 71% increase in cost-burdened seniors from 2010 to 2019 compared to a 51% increase in cost burdened seniors in Alameda County.
- **Existing Incentives:** Allows for a 20% increase in density for senior housing with no affordability restrictions. The City has one market rate senior housing project that was entitled in 2017 and did not request a density bonus. There are two 100% affordable senior housing projects that are using density bonus.
- **Possible further incentives:** If the City chooses to further incentivize market rate senior housing, it can increase feasibility by increasing the density bonus from 20% to

25% and/or allowing one incentive/concession of development standards. However, the trade-off is that it will disincentivize the inclusion of on-site affordable senior housing. A senior rental housing project needing a 25% increase in density would currently require under state law that 5% of the units be restricted to very low-income households or 14% of the units be restricted to low-income households. The City needs to determine if it should prioritize market rate senior housing or affordable senior housing. Staff recommends prioritizing affordable housing for seniors based on findings in the City's Displacement Study.

Housing for All (Universal Design)

- **Need:** Universal design means creating spaces that meet the needs of all people, young and old, able and individuals with disabilities, without adaptation or special design.
- **Existing Incentives:** There are no incentives that encourage the development of housing that incorporate universal design principals.
- **Possible Incentives** Propose a marginal increase in the maximum density bonus and/or one additional incentive/concession for projects that incorporate some units with universal design features, and a more substantial density bonus increase for projects that construct projects to provide a greater number of units that meet universal design principles. For example, projects that provide on-site affordable housing that offer some universal design would receive a 5% density bonus increase (total of 55%) and projects that propose at least half of the units incorporating universal design would receive a 10% increase (Total of 60%). Additionally, for projects that do not provide on-site affordable housing, the City could allow a 5% or 10% increase in density. If the HHTF supports incentivizing universal design, staff will further research universal design features that improve usability by all people and what level of such features would qualify for what bonus.

Large Households:

- **Need:** The City's Displacement Study documents that there has been a 91% increase in overcrowded units from 2010 to 2019. Based on preliminary findings of the City's Housing Element, the City has a higher rate of overcrowding than Alameda County. Additionally, only 20% of rental units contain three or more bedrooms compared to 79% of ownership housing in Hayward. For many Hayward community members, ownership housing is inaccessible.
- **Existing Incentives:** There are no incentives that encourage the development of rental housing with three bedrooms or more.
- **Possible Incentive:** When a market rate rental project is proposing to designate more than 50% of the units as 3 or more-bedroom unit types, the City could agree to reduce the square footage of any affordable units to reduce the development cost or could be eligible to receive a 5% density bonus. Currently, the Affordable Housing Ordinance (AHO) requires the affordable units to be comparable in size. Staff would have to evaluate the appropriate size differential to ensure the livability of the units is not impacted and to ensure that providing smaller affordable units would not create a disparate impact. As an alternative, the City could provide one additional incentive/concession to projects that provide on-site affordable units in compliance with the AHO and at least 50% of the total project units serving larger households.

Staff recommends addressing the lack of rental housing inventory for large households by incentivizing the development of units with three bedrooms or more.

Increasing Affordable Housing

More Affordable Ownership Housing or Deeper Income Targeting.

- **Existing Incentives:** By meeting the current on-site affordable housing requirements of the AHO, the developer is entitled to one incentive/concession. In order to receive two concessions, the developer must restrict 20% of the units affordable to moderate income households. Developers of for sale housing have indicated that density limits are not normally a barrier to building single family homes and town homes. No high-density condominium project has been proposed under the current AHO.
- **Proposed Incentives:** Allow one additional incentive/concession that would otherwise qualify for minimum State Density Bonus allocations, for any project proposing to provide 50% more affordable units than required by the AHO or provide low-income units on 50% of the required affordable units. This additional incentive may encourage developers to exceed the minimum requirements of the AHO but it may also discourage them from meeting the requirements seeking a density bonus that will require 20% of the units to be affordable.

Mixed-Income Projects.

- **Existing Incentive:** Projects that set-aside 15% of units affordable for very low-income households, 24% of the units for low-income households, or 44% of the units for moderate income households are eligible to receive a 50% increase in allowable density. To date, no mixed-income project has requested a density bonus at the maximum level.
- **Proposed Incentives:** To incentivize developers to create housing at these higher affordability levels, the City could provide a 60% density bonus plus one additional incentive/concession (four instead of three). The additional revenue provided by the increased density and the cost savings provided by the additional incentive/concession may improve project feasibility for this higher percentage of affordable units.

100% Affordable Housing.

- **Existing Incentives:** 100% affordable housing projects are entitled to up to 80% increase in density or unlimited increase in density if the project is within 1/2 mile of a major transit stop. Additionally, they are eligible for up to four incentives and up to three stories of additional building height.
- **Proposed Incentive:** To further reduce development costs, staff recommends allowing affordable housing developers to request up to five concessions, which is one additional concession for projects that are 100% affordable.

Projects Incorporating Accessible Dwelling Units.

- **Existing Incentives:** There are no incentives that encourage the development of Accessory Dwelling Units (ADU). However, a project meeting the minimum

requirements for on-site affordable housing units under the AHO would be entitled to a 5% increase in density.

- **Proposed Incentive:** Projects that include ADUs as part of for-sale projects would receive a 5% density bonus. ADUs do not count towards the overall density of a project. However, ADUs help capture more units and can count toward the Regional Housing Needs Allocation (RHNA) requirements and are typically rented at a lower cost or used to house extended family. Adding ADUs to projects complies with the goal of adding more dwelling units and more units affordable by design.

While this proposed incentive would disincentive the production of on-site affordable deed restricted housing units because the developer could receive the increase in density without providing the on-site affordable units, it would double the number of project units with half of the units affordable by design. Staff recommends this mini bonus to encourage the inclusion of ADUs and payment of the affordable housing in-lieu fee.

Pre-Defined Incentives that Reduce Development Costs

Reduction of Required Commercial Space in Mixed-Use Project. Based on interviews with developers, required commercial space in Mixed Use zoned areas has created a barrier for the development of student housing within 1 mile of campus and creates a barrier to the development of affordable housing. Staff proposes a predefined incentive to reduce the required commercial space for housing targeting priority populations identified above. Due to the potential impacts on economic development, staff would further explore potential pre-defined incentives to ensure that the allowance would not result in unmarketable space.

Increased Height Near Transit. Mixed income for-sale and rental projects that propose to provide on-site affordable units within one-half mile of a major transit stop (BART or AC Transit), along Mission Boulevard, and within the Downtown Specific Plan area could qualify for one additional story of building height as a 4th concession (mixed income project currently limited to three incentives/concessions). Projects that provide 100% affordable units are already entitled to three additional stories of building height and unlimited density when located within one-half mile of a major transit stop. A major transit stop is a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

Fee Waivers (impact fees such as traffic and park fees). City 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). 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 developers the cost to finance the fees. If supported by the HHTF, staff would explore

this option further with Public Works to ensure that risk of non-payment is minimized. Staff anticipates this could 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.

Summary. As discussed in this report, the City needs to update its Density Bonus regulations to bring them into compliance with State Law. Staff is interested in concise direction from the Homelessness and Housing Task Force on the following questions:

- Does the Task Force agree with the additional incentives for certain types of housing, as recommended by staff?
- Does the Task Force agree with the amount of density bonus increases for certain types of housing development, as recommended by staff?
- Does the Task Force prefer targeting special needs populations over incentivizing additional on-site affordable housing?

STRATEGIC ROADMAP

In January 2020, the City 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:

- 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 State Housing and Community Development's 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 City 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 III.

NEXT STEPS

Following review and feedback from the Homelessness and Housing Task-Force Meeting, staff and the consultant team expect to finalize the list of proposed density bonus revisions and plan to present the updated draft ordinance to the Planning Commission for recommendation in the Fall 2022 with City Council consideration shortly thereafter. Following adoption, the City's consultant team will create two informational documents to aid developers and staff in processing these applications. The documents will include a developer checklist and an informational handout that can be updated, as needed, in response to changes to State laws.

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