



SUBJECT

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

RECOMMENDATION

That the Planning Commission provide feedback and guidance on staff's recommended updates to the Density Bonus Ordinance, including the specific density bonus incentives and concessions contained within this staff report. Following this work session, staff will finalize the draft Ordinance, identify the amendments needed to Chapter 10 of the Hayward Municipal Code to reflect these updates, and complete the California Environmental Quality Act (CEQA) analysis before presenting to the Council for final consideration in December 2022.

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 or impose additional restrictions. Staff is proposing to update the City's Density Bonus Ordinance to reflect three main changes:

- Exceed the State's Density Bonus Maximum by 5% for all density bonus projects that provide on-site affordable units;
- Exceed the State's Density Bonus Maximum by 10% for projects that provide on-site affordable units and target special populations; and
- 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) to encourage development of more affordable units.

These recommendations are based on previous feedback provided by the Council, Planning Commission, and the City's Homelessness Housing Task Force (HHTF). Staff is also seeking to streamline the review of Density Bonus applications and working on a policy for possible fee deferrals to offset upfront costs associated with affordable housing construction to help overall project feasibility. This work session is to obtain feedback from the Planning Commission on staff's recommended updates to the City's Density Bonus Ordinance, which would incentivize affordable housing production and housing for several target populations.

Following this work session, staff will finalize the draft Ordinance and related CEQA analysis before returning to Council for final consideration in December 2022.

BACKGROUND

The City's existing Density Bonus Ordinance¹ 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. 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 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, waivers, 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 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).

¹ Existing Hayward 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 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:

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 needs; and
5. 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); however, 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 II.

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

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 and Attachments

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

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 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. In response to Council feedback, staff reviewed the options available to limit parking, but due to the existing State Density Bonus law, the City's ability to require additional parking for projects that qualify for a Density Bonus is limited. Staff is, however, continuing to evaluate the parking requirement for all residential projects as part of the Residential Design Study Update, which does include a parking analysis. The findings of that analysis will be presented to the Commission and Council for review and feedback at a future meeting yet to be scheduled.

In addition, the Council also 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. 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.

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?

⁵ October 18, 2022, City Council Work Session and Attachments

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

- 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 IV.

DISCUSSION

Based on the feedback from the Council, Planning Commission, and HHTF, staff is proposing four main changes to the City's Density Bonus Ordinance to provide cost saving incentives that could increase the percentage of on-site affordable housing and/or deepen the level of affordability served. Staff believes the proposed density bonus increase, coupled with the additional incentives/concessions to encourage the development of on-site affordable units and streamlining the review of applications, will help incentivize construction of housing in Hayward with a focus on the inclusion of on-site affordable units for development projects. A comparison of the State's existing Density Bonus regulations and the proposed Hayward regulations are detailed below and summarized in tables included as Attachment II.

Additional Density Bonus For On-Site Affordable Units

As part of the update to the City's Density Bonus Ordinance, staff is recommending a 5% density bonus increase over the maximum density bonus for projects that meet the State's criteria and provides on-site affordable units. While applicants currently have the option to pay an inclusionary in-lieu fee or provide on-site affordable units in order to meet the City's Affordable Housing Ordinance, staff recommends a higher density bonus be provided for applicants who choose to provide units on-site at levels necessary to achieve the maximum density bonus. Not only will this option support the construction of additional housing to assist the City to meet 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 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 the Council, Planning Commission, and HHTF, there is interest in creating additional density bonus for housing that accommodates certain

target populations, including those people with disabilities, affordable student housing, senior housing, mixed-income rental projects that provide more than 20% of the rental units for 3+ bedrooms, and projects that incorporate universal design principals. The feedback received is also consistent with the findings of the Displacement Study⁶, which identified a need for additional housing for certain populations, and Section 1.6, Special Needs Groups in Appendix B, Housing Needs Assessment of the Draft Housing Element⁷.

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 for market rate senior projects in order to encourage instead the development of affordable senior housing units. The recommended density bonus increases for Hayward is summarized in the table included in Attachment II.

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. 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/incentive is defined as:

- 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.

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 shown in Attachment II. 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

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.>

⁷ Draft 2023-2031 Housing Element - Appendix B, Housing Needs Assessment:

<https://haywardhousingandclimateupdate.com/wp-content/uploads/2022/08/Appendix-B-Housing-Needs-Assessment.pdf>

recommending that one additional incentive/concession be provided. Some of the types of requests that could be realized from the additional concession include, but are not limited to:

- A reduction or elimination of the EV charging space requirement;
- A request to not undergrounding utilities along a project frontage; and
- A reduction in the required ground floor commercial height for mixed-use projects.

Although the City Council expressed concern about concessions that reduce the amount of required open space area, the amount of required commercial space, and additional reductions in the amount of parking, staff notes that a developer who meets the law's requirements for affordable or senior units are entitled to the density bonus and other assistance as of right, subject to limited health and safety exceptions. Historically, many of the concessions that developers have requested in the City involve reduction in the amount of open space, reductions in the required setback areas, and reductions in the amount of parking 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, 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. Staff proposes that applications under this newly recommended ordinance would be considered by the lowest approving body, which in straightforward cases (such as an application for Site Plan Review for a project that meets all objective development standards) may be an administrative staff approval. Streamlining density bonus applications could save the developer and City time and money and it supports the goals identified in the two housing work plans adopted by Hayward by incentivizing housing production.

Fee Waivers (impact fees such as traffic and park fees). Council has already approved a waiver of park fees and traffic impact fees for 100% affordable housing projects and reduction of impact 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 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. Staff is currently

working 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.

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

NEXT STEPS

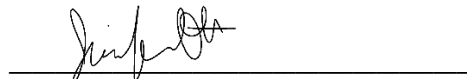
Following this work session, staff will finalize the draft Ordinance and complete the CEQA analysis before presenting to the Council for final consideration in December 2022. Following adoption, staff will work with our consultant team to create two informational documents to aid developers and staff in processing these applications. The documents will include a developer checklist and an informational handout which can be updated, as needed, in response to changes to State law.

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