



MEMORANDUM

TO: Planning Commission

FROM: Brian Pedrotti, Community Development Director

BY: Andrew Perez, Planning Manager

SUBJECT: Consideration of Development Code Amendments Regarding State Density Bonus Law and Implementation of Assembly Bill 1397 and Finding That This Action Not a Project Under the California Environmental Quality Act Pursuant to State Guidelines Section 15061

DATE: July 30, 2024

RECOMMENDATION:

- 1) Adopt a Resolution recommending that City Council approve the ordinance amendments; and
- 2) Determine that the ordinance amendments are exempt from review under the California Environmental Quality Act pursuant to Section 15061(b).

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No financial impact is projected.

BACKGROUND:

On January 26, 2021, City Council adopted the City's 2020-2028 Housing Element. The Housing Element was certified by the State Department of Housing and Community Development (HCD) on May 5, 2021. The Housing Element includes numerous programs that the city is required to initiate to implement the policies and achieve the quantified objectives listed in the Housing Element. Planning staff reports the status of each of the programs to HCD in the annual progress reports submitted to the State.

The proposed ordinance amendments would implement Housing Element Programs A.1-1 and A.10-1, both of which are anticipated to establish new affordable housing units. Program A.1-1 implements Assembly Bill 1397 (AB 1397) which requires the City to provide by-right approval for projects that include 20 percent of the units affordable to lower income households if the project is located on a site listed in the Housing Element inventory that are reuse sites from the previous Housing Element cycles.

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Program A.10-1 directs staff to update AGMC Section 16.82 regarding Density Bonuses to be consistent with current State law. Density bonus is a State program that allows a developer to build more units than would otherwise be allowed by the Municipal Code when a certain percentage of the units in the project are reserved for lower income households. For example, a housing development that proposes to reserve ten percent (10%) of the units for low-income households is entitled to a twenty percent (20%) density bonus. California Government Code Section 65915 establishes regulations for residential density bonuses and requires every local agency to adopt an ordinance to implement these regulations. Last updated in 2007, AGMC Section 16.82 is no longer consistent with State law with the passing of AB 1763 (2019), AB 2345 (2020), and AB 1287(2023), among others. Among the changes to State density bonus laws are increases to the maximum available density bonuses, the number of incentives and concessions available to an affordable housing developer, and a new secondary density bonus that was established by AB 1287.

The projections developed during the production of the Housing Element estimates that this development code amendment to implement the two programs has the potential to produce 18 extremely low-income units, 37 very low-income units and 63 low-income units.

ANALYSIS OF ISSUES:

Ministerial Review of Projects with 20% Affordable Housing

[AB 1397](#) was adopted in September 2017 to create new state regulations related to Housing Elements, including requirements surrounding the sites inventory. In compliance with AB 1397, the proposed Development Code Amendment (DCA) includes a provision to allow by-right, ministerial approval for projects that include 20 percent of the units affordable to lower income households if the projects are located on sites that are reuse sites from the previous Housing Element cycles. For the purpose of this DCA, “by-right” means that the project is exempt from discretionary review and any corresponding discretionary permit that would constitute a “project” under the California Environmental Quality Act. Ministerial projects are not subject to CEQA, therefore projects that meet the aforementioned affordability criteria would be exempt from environmental review.

The DCA was drafted in a way that the ministerial approval would occur concurrently with the issuance of the building permit for the project. The typical reviews by the Planning, Building and Life Safety, and Engineering Divisions would still occur to ensure compliance with applicable standards found in the City’s Municipal Code and State Building Codes, but the process will be streamlined by eliminating the discretionary approval step that is typically included in the process.

There are four (4) parcels that fit this criterion, and are listed in Program A.1-1:

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- APN 077-011-010 – 700 Oak Park Blvd.
- APN 077-204-028 – 280 S Halcyon Rd.
- APN 077-211-022 – 1125, 1131, 1133 E Grand Ave.
- APN 077-221-031 – 1019 E Grand Ave.

As outlined in Program A.1-1, all projects with 20% low or very low units would be ministerially approved. Implementing this Program incentivizes developers to provide more affordable housing than required by the inclusionary zoning regulations (5% of units reserved for very low-income households, or 10% for low income, or 15% moderate income) and would help the City reach its RHNA goals for affordable housing.

State Density Bonus Law

Effective as of January 1, 2024, AB 1287 allows for an additional “stackable” density bonus on top of the existing maximum 50% density bonus provided by State Density Bonus Law. This new provision allows an additional density bonus of twenty percent (20%) to fifty percent (50%) when a project provides an additional set-aside of Very Low Income or Moderate-Income units, as set forth in the tables of Government Code Section 65915(v). Additionally, AB 1287 increases the number of available incentives or concessions for certain mixed-income and one hundred percent (100%) affordable housing developments, with the number of incentives being increased by one for both project types.

The additional density bonus will be applied in a “stackable” manner for both rental and for-sale housing developments. The City will apply the current density bonus tables of Government Code Section 65915(f) and (v) in order to grant the "stackable" density bonus. This would allow for projects to potentially obtain a total 100% density bonus by providing the initial percentage of affordable units to secure an initial 50% density bonus, and then a secondary percentage of affordable units in order to obtain a "stackable" or additional density bonus of up to 50%. Once the set-aside requirements are met to receive the maximum 50% “primary” density bonus, an applicant may request the additional density bonus available through AB 1287. The additional density bonus will be available to projects which meet the following minimum set asides:

- Rental or for sale housing developments which provide 15 percent of the total units to Very Low-Income households.
- Rental or for sale housing developments which provide 24 percent of the total units to Lower Income households.
- For sale housing developments which provide 44 percent of the total units to Moderate Income households.

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The additional “stackable” density bonus per AB 1287 will be granted to rental or for-sale projects that meet the minimum affordability requirements listed above and also meet the following additional set-aside percentages:

Incentives and Concessions

AB 1287 increases the number of available incentives or concessions for mixed-income, and 100 percent affordable housing developments, as defined in Government Code Section 65915(b)(1)(G). Available incentives are updated to include the following:

- Four (4) incentives or concessions for mixed-income projects that include at least 16 percent of the units for Very Low Income households in a development in which the units are for rent or for sale or at least 45 percent of the units for Moderate Income households in a development in which the units are for sale.
- Five (5) incentives or concessions for a project meeting the criteria of a 100 percent affordable housing development.

Due to the ever-evolving nature of State Density Bonus Law, this DCA proposes to adopt State law by reference, preventing the need to update the Municipal Code every time State law changes. This Section of the Government Code does not afford the City any discretion in its application of the density bonus law, therefore adopting the law by reference minimizes the amount of future staff time required to be compliant.

ALTERNATIVES:

The following alternatives are provided for the Commission’s consideration:

1. Adopt the Resolution recommending that City Council adopt the ordinance amendments;
2. Modify and adopt the Resolution;
3. Do not adopt the Resolution or
4. Provide other direction to staff.

ADVANTAGES:

The DCA would implement two housing programs from the City’s Housing Element that encourage the development of affordable housing to help meet the City’s Regional Housing Needs Assessment targets.

DISADVANTAGES:

None identified.

ENVIRONMENTAL REVIEW:

The ordinance amendment is not subject to the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines sections 15060(c)(2) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably

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foreseeable physical change in the environment; and the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The DCA allows for the ministerial review of housing projects on certain sites specified in the Housing Element and ministerial projects are not subject to CEQA. An update to the Municipal Code related to density bonuses is also exempt because this action cannot cause a physical change to the environment on its own. Thus, it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

ATTACHMENTS:

1. Resolution