



MEMORANDUM

TO: City Council

FROM: Brian Pedrotti, Community Development Director

BY: Andrew Perez, Planning Manager

SUBJECT: Development Code Amendments to Implement Housing Element Programs and Finding that this Action is Not a Project Under the California Environmental Quality Act Pursuant to State Guidelines Section 15061

DATE: August 13, 2024

RECOMMENDATION:

Introduce and conduct the first reading by title only, waiving further reading of an Ordinance entitled, "An Ordinance of the City Council of the City of Arroyo Grande Adding Section 16.52.270 Relating to Implementation of AB 1397 and Amending Chapter 16.82 of the Arroyo Grande Municipal Code Relating to State Density Bonus Law and Finding the Ordinance Exempt from the California Environmental Quality Act."

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 incentivize the development of 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 reserve twenty percent (20%) of the units for lower income households on eligible sites listed in this program. Program A.10-1 directs staff to update [AGMC Section 16.82](#) to be consistent with current State law regarding density bonuses for residential development. Density bonus is a State

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law that allows a developer to build residential units at a higher density 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 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 regarding density bonus with the passing of various state laws relating to the same, including AB 1763 (2019), AB 2345 (2020), and AB 1287 (2023), among others. Recent changes to State density bonus laws include 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 implementing the two programs has the potential to produce 18 extremely low-income units, 37 very low-income units, and 63 low-income units.

Planning Commission Review

The ordinance amendments were considered by the Planning Commission at a special meeting of the Commission on July 30, 2024. The Planning Commission adopted a resolution recommending the City Council adopt the amendments as proposed by staff.

ANALYSIS OF ISSUES:

Program A.1-1 – “By Right” Review of 20% Affordable Housing Projects on Certain Sites AB 1397 was adopted in September 2017 to create new state regulations related to Housing Elements, including requirements surrounding the sites inventory. Among other changes to state law, AB 1397 amended Government Code section 65583.2, and imposed certain requirements on “reuse sites,” meaning sites available and identified on the City’s Housing Element to accommodate housing needs but which sites were not approved for development in previous housing element cycles. (See Gov. Code section 65583.2(c)) To comply with AB 1397, the proposed Development Code Amendment (DCA) to Title 16 of the AGMC includes provisions to allow “by right” approval for projects that reserve 20% of the units for lower income households if the projects are located on sites that are reuse sites from the previous Housing Element cycles. There are four (4) parcels that fit this criterion, and are listed in Program A.1-1:

- 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.

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- APN 077-221-031 – 1019 E Grand Ave.

Under AB 1397 and this DCA, “by right” means that the local government’s review of an owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary review or approval that would constitute a “project” under the California Environmental Quality Act (CEQA). However, “use by right” does not exempt the use from design review for objective criteria.

The DCA was drafted in a way that the by right 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.

As outlined in Program A.1-1, all projects with 20% low or very low units would be approved by right, without discretionary review. Implementing this Program incentivizes developers to provide more affordable housing than required by the City’s inclusionary housing ordinance, which requires that a development reserve either 5% of units for very low-income households, 10% for low-income households, or 15% moderate income households. Adoption of the Ordinance is anticipated to benefit the City by increasing affordable housing stock and move closer to attaining the City’s Regional Housing Needs Assessment (RHNA) goals for affordable housing, as established by the adopted Housing Element.

State Density Bonus Law

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 maintain AGMC Section 16.82 in compliance with State law.

Recent Changes to Density Bonus Law

For additional context to support the decision to adopt density bonus law by reference, this section of the staff report will summarize recent changes to the law. For example, effective as of January 1, 2024, AB 1287 allows for an additional density bonus on top of the existing maximum fifty percent (50%) density bonus provided by State Density Bonus Law. The bonus is “stackable,” meaning that Density Bonus Law allows an additional density bonus of 20% to 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

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housing developments, with the number of incentives being increased by one for both project types.

The additional density bonus is applicable for both rental and for-sale housing developments. The City will apply the density bonus tables of Government Code Section 65915(f) and (v) to implement density bonus law. 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 an 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 % 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.

The additional 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 certain additional set-aside percentages specified in Government Code Section 65915(v)(2).

Incentives and Concessions

AB 1287 increases the number of available incentives or concessions for mixed-income, and 100% 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% 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% affordable housing development.

Next Steps

Introduction of the Ordinance will allow the City Council to schedule its adoption at a subsequent meeting. The Ordinance would then become effective 30 days after adoption.

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ALTERNATIVES:

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

1. Introduce and conduct the first reading by title only, waiving further reading of an Ordinance entitled, “An Ordinance of the City Council of the City of Arroyo Grande Adding Section 16.52.270 Relating to Implementation of AB 1397 and Amending Chapter 16.82 of the Arroyo Grande Municipal Code Relating to State Density Bonus Law and Finding the Ordinance Exempt from the California Environmental Quality Act”; or
2. Provide other direction to staff.

ADVANTAGES:

The DCA will implement two housing programs from the City’s Housing Element that incentivize the development of affordable housing to supplement the existing affordable housing stock while helping the City meet its Regional Housing Needs Assessment targets.

DISADVANTAGES:

No disadvantages has been 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 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:

A public hearing notice was published on August 2, 2024, in the New Times, and the Agenda was posted at City Hall and on the City’s website in accordance with Government Code Section 54954.2.

ATTACHMENTS:

1. Proposed Ordinance entitled, “An Ordinance of the City Council of the City of Arroyo Grande Adding Section 16.52.270 Relating to Implementation of AB 1397 and Amending Chapter 16.82 of the Arroyo Grande Municipal Code

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Relating to State Density Bonus Law and Finding the Ordinance Exempt from
the California Environmental Quality Act”