



Agenda Report

October 15, 2018

TO: Honorable Mayor and City Council
FROM: Planning & Community Development Department
SUBJECT: DEVELOPMENT INTENSITY AND STRATEGIES FOR INCREASING AFFORDABLE HOUSING

RECOMMENDATION:

It is recommended that the City Council:

- 1) Consider the various options provided in this report and provide further direction to staff;
- 2) Direct staff to undertake the steps necessary to increase the inclusionary housing percentage through the process outlined in this report;
- 3) Approve the staff recommendation related to the inclusionary housing in-lieu fee as outlined in this report and is the subject of a separate public hearing this evening; and
- 4) Initiate a zoning code text amendment to implement strategies for increasing affordable housing by revising the inclusionary housing ordinance.

EXECUTIVE SUMMARY:

At prior meetings, the City Council directed staff to develop short and long-term policy options to address the intensity and impacts of Density Bonus Projects and to increase developer responsibilities to increase the production of affordable housing City-wide. This report provides additional context on regulatory issues and recent development patterns, and offers options that seek to balance developer and city obligations to increase the production of affordable housing. This report is intended to provide the City Council with a general strategy for increasing affordable housing production and placing a greater onus on project applicants by making revisions to the City's Inclusionary Housing Ordinance. The recommendation is for the City Council to provide further direction and initiate a Zoning Code Text Amendment to implement these strategies.

BACKGROUND:

Framing the Issue

Over the course of various study sessions focused on recent growth and development trends in Pasadena, the City Council and the community have expressed concerns regarding higher-intensity development projects that have been recently completed or are currently in the "pipeline" (pipeline projects are those that are currently being processed or those that have been approved but not yet built), especially those that received concession permits for additional height and/or density in exchange for providing affordable housing units. A major concern that was voiced is that in taking advantage of State density bonus law and associated concessions, projects have been approved that are inconsistent with the scale and character of surrounding neighborhoods and have gone beyond what was anticipated in the General Plan. At the same time, these projects have included comparatively little public benefit in the form of affordable housing production. Ultimately, the City Council directed Planning and Community Development staff to propose policy changes that could address the imbalance between increased development intensity and inadequate housing affordability.

Previous Discussions

Over the course of several months and numerous meetings with the City Council and Planning Commission, staff presented various options aimed at reducing development intensity by focusing on reducing the allowable heights of buildings so that when concessions were granted, a project's bulk and mass would be consistent with the City's Specific Plans and General Plan. One possible approach was to enact an interim ordinance that would reduce allowed heights across the City by a fixed amount. Another option was to reduce allowable heights by an amount based on the existing heights of buildings on each block. After considering these options, there was no consensus on a preferred approach, and staff was directed to continue working on potential options.

Furthermore, the City received correspondence from the State of California Housing and Community Development Department (HCD) regarding the potential efforts to reduce development intensity (Attachment A, draft letter from HCD received July 6, 2018). In summary, HCD expressed serious concerns about potential changes to reduce development capacity, particularly in areas that had been identified in the City's certified Housing Element inventory of development sites, which are required to be maintained in order to allow for development consistent with the City's Regional Housing Needs Assessment allocation. HCD indicated that if the capacity of the inventory sites were to be reduced, the Housing Element would be at risk of being de-certified. The de-certification of the Housing Element could lead to serious consequences, including limited access to State housing funding sources, court-ordered mandatory compliance with State housing element law, suspension of local control over land use planning and development matters, court approval of housing developments, and/or liability on the City for paying legal fees in the case of any lawsuits. In response, Council directed staff to study options that did not put the City's certified Housing

Element at risk.

State Law

Over the course of the past two years, the California State legislature has passed numerous bills aimed at increasing housing production and affordability. Many of these laws went into effect in January 2018, and have the overall effect of limiting the ability of local governments to deny proposals for housing development, particularly those that include affordable units and are seeking to take advantage of State density bonus law. With housing affordability remaining a key issue for the State for the foreseeable future, it is expected that the State will continue the ongoing trend toward limiting local governments' ability to deny or restrict development intensity, particularly the development of housing and affordable housing.

The state is also pressuring cities to actually construct affordable housing. Cities are subject to SB 35 'streamlined' review depending on actual building permits issued in each income category (very low, low, moderate, and above moderate). The Governor last month signed SB 1333, which will apply the so-called 'no net loss' statute (Government Code Section 65863) to charter cities like Pasadena. Commencing January 1, 2019, if sites designated in the City's Housing Element as suitable for lower income housing are not actually developed for lower income housing, the City must make findings that adequate sites remain to fill the remaining need. While the City's Housing Element shows many more sites as suitable than required, and so should have no difficulty in making these findings, this provision again shows the state's increasing interest in requiring cities to construct lower income housing.

DISCUSSION:

Balancing the Scale

The City of Pasadena has long been at the forefront of housing policies and programs, not only in the San Gabriel Valley, but across southern California as a whole. In 2000, Pasadena was one of the first communities to develop a housing vision that expresses its commitment to housing its residents:

All Pasadena residents have an equal right to live in decent, safe and affordable housing in a suitable living environment for the long-term well-being and stability of themselves, their families, their neighborhoods, and their community. The housing vision for Pasadena is to maintain a socially and economically diverse community of homeowners and renters who are afforded this right.

This policy statement from the City's Housing Element represents an inclusive vision for multi-family development projects in the City. The State's letter, in combination with recent and proposed changes in state law that are designed to increase the production of housing and decrease local land use controls over multi-family housing, result in the conclusion that if the City cannot reduce density, i.e., the mass and scale of projects that take advantage of the State's density bonus law, the City should can achieve local

control and further this vision through increased developer obligations to build affordable housing. The following outlines several policy proposals which advance the City's housing visions and collectively seek to increase the production of affordable housing while attempting to limit potential unintended consequences of SB 1818.

In summary, and as discussed more fully below, staff recommends the following:

1. Increase developers' obligation with respect to the required affordable inclusionary percentage;
2. Increase developers' in-lieu obligation when a project does not provide affordable units on-site;
3. Enact policy amendments to the City's existing Inclusionary ordinance; and
4. Establish a new affordable housing concession menu process to incentivize development that exhibits an appropriate mass and scale.

Raising the Inclusionary Housing Percentage

The primary strategy to improving the balance between concessions and increased affordable housing production is to increase the required percentage of inclusionary units for proposed housing developments. Currently, the City's Inclusionary Housing Ordinance requires 15 percent of all multi-family units to be set aside as affordable housing for any project with 10 or more units. The 15 percent inclusionary requirement is further broken down by affordability level for projects with rental units and those with for-sale units, as follows:

Current Inclusionary Requirement	
Rental Projects	
Moderate	5%
Low Income	10%
<i>Total:</i>	<i>15%</i>
For-Sale Projects	
Moderate	15%
<i>Total:</i>	<i>15%</i>

Staff suggests that the City Council consider raising the inclusionary requirement from 15 percent to some higher number. The amount of increase, as well as the allocation of the increase to income-level, would be determined by analysis of market conditions, comparison to other jurisdictions with inclusionary ordinances, and the City's income-level housing needs based on the Housing Element. Moreover, these changes would be informed through public participation via the Planning Commission. A summary of other jurisdictions' inclusionary requirements is provided below for reference.

Inclusionary Housing Requirements by City	
City	Inclusionary Requirement (% of project units)
Berkeley	20%
Brea	10% (for-sale only)
Huntington Beach	10% (for-sale only)
Irvine	15%
Pasadena	15%
Richmond	10% - 17%
San Bruno	15%
San Jose	15% (for-sale only)
Santa Monica	5% - 25%
West Hollywood	20% - 30%

Under the current inclusionary housing requirements, a developer of a rental housing project that provides the required 10 percent low-income units on-site is automatically qualified for a 20 percent density bonus under State density bonus law. A developer of a for-sale project that provides the required 15 percent moderate-income units on-site is automatically qualified for a 10 percent density bonus under State density bonus law. Thus, the existing inclusionary requirement already puts projects over the threshold to receive a State density bonus and become eligible for concessions without substantially more affordable housing being produced for the City. Increasing the required inclusionary units would increase the City's stock of affordable units.

Increasing Inclusionary In-Lieu Fee

At the August 27, 2018 City Council meeting, the Housing Department brought forth a fee study and recommendation to increase the inclusionary housing in-lieu fee. At the conclusion of the discussion, the City Council opted to continue the matter until more Councilmembers were present and additional information could be provided about potential changes to the Inclusionary Housing Ordinance as a whole. Staff recognizes that this issue is the subject of a continued public hearing under a separate item this evening and the City Council may take action on this issue apart from the issues addressed in this report.

Pasadena, like most cities, provides developers alternative ways to satisfy their affordable housing obligation. A common option is to pay a fee in lieu of on-site production. In lieu-fees are generally used to help finance affordable housing developed off-site. In-lieu revenues are deposited into the Inclusionary Housing Trust Fund which monies are used to help finance a variety of affordable housing activities, including the

rehabilitation of existing affordable housing developments and the development of ground-up projects that are not produced by the market. Recent examples include *Heritage Square* (70 units of very low income housing for seniors) and *Marv's Place* (21 units of permanent supportive housing for homeless families). In general, an in-lieu can be imposed to capture the differential between the market prices of new rental and for-sale housing units and the prices that low/moderate income households can afford to pay. The City's methodology for calculating the in-lieu fee amount refers to this differential as the "affordability gap."

The *Pasadena Affordable Housing In Lieu Fee Analysis* prepared by DRA dated August 13, 2018 ("The Study," Attachment B to tonight's public hearing report) indicates that the current in-lieu fees are less than the affordability gap. While the affordability gap varies anywhere from \$217,242 for a rental unit to \$768,700 for a condominium unit (see Tables 9 and 13 of the study, respectively), this results in a situation wherein the City is subsidizing the cost of the developer's obligation to provide affordable housing.

The fee or payment in-lieu of building affordable units within a new multi-family residential project is one way of satisfying State law, but does not have to be offered as an option. Pursuant to recent legislation sometimes referred to as the "Palmer fix", California Government Code Section 6580 (g) allows cities to:

*Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate income, lower income, very low income, or extremely low income households...The ordinance shall provide alternative means of compliance that **may include, but are not limited to**, in lieu fees, land dedication, offsite construction, or acquisition and rehabilitation of existing units. [Emphasis added].*

The in-lieu fee option affords developers additional options to comply with the City's inclusionary ordinance. However, as indicated by the Study, the existing fee does not provide the monies needed to cover the affordability gap. This results in shifting (a portion of) the obligation to provide affordable housing from the developer to the City. Given the City's limited resources and lack of consistent and predictable affordable housing funds from Federal, State or other sources, it is challenging to produce affordable units and affordability gap that results from the existing in-lieu fee only exacerbates this situation. While increasing the in-lieu fee is not going to result in the production of affordable housing for all that may qualify for it, any increase to the City's Inclusionary Housing Trust Fund will be of benefit. Therefore staff recommends that the in-lieu be increased to cover the affordability gap, as justified in the Study.

Should the Council agree to raise the in-lieu fee, it would also need to identify when (to which projects) the fee would be applied. Currently, the in-lieu fee, similar to other construction fees, is required to be paid at the time of building permit issuance and any increase in the fee would not change that. However, the question arises as to whether or not consideration should be given to developers that have already started the

entitlement process. One option would be to make the new fee applicable to all projects that have not yet submitted a complete application for a building permit. From a “fee collection” viewpoint, this approach would be preferred, because it acknowledges the need to place the affordability gap burden on all projects that are in the pipeline that have not yet submitted building construction plans. However this approach ignores the time, money, investment and financial planning undertaken by a developer to get to the point where they are allowed to submit for building permit (PPR, discretionary planning application, CEQA clearance, etc.)

Another option would require that the increased fee become effective at a certain designated time in the future, such as 6 months or a year from the date of adoption, – so long as a complete building permit application was submitted to the City, developers would be locked into the current rate. This option allows time for developers who are nearing the end of the process to apply for building permit within a specified timeline and ensures the City that, after a certain specified date, the fee will apply to all projects.

A third option is require that the new fee be applicable to any project which has not yet submitted a complete planning application. This ensures that the fee, cost, and revenue projections assumed during the planning phase of the project are carried through to building permit issuance. The drawback of this approach is that it may take 6 months to a year to process one of these complete planning applications. The entitlement would then be good for up to five years from the approval date (or 6 years from now) and the project would be locked into the current in-lieu for a project that wouldn't begin construction for many years from now. While there is no one right or wrong option, and each has trade-offs, staff recommends that the fee be applied to all projects that have not been issued a valid building permit 6 months from the effective date of the new fee.

Amendments to the Inclusionary Housing Ordinance

In addition to increasing both the required inclusionary percentage and the in-lieu fee as discussed above, staff recommends that the entire inclusionary ordinance be evaluated for opportunities to reduce inequities between the City and developers with respect to the production of affordable housing. Several issues have been already been identified. For instance, a significant change would be to eliminate the “trade down” option in the existing ordinance.

The existing inclusionary regulations allow for a “trade down” to receive more credit for each unit actually provided. For example, if a Very Low-Income unit is provided in lieu of a Low-Income unit, the project receives a credit of one and a half affordable units for each unit actually provided. If a Very Low-Income unit is provided in lieu of a required Moderate-Income unit, the project receives a credit of two affordable units for each unit actually provided. This results in projects with a lesser overall number of affordable units than the otherwise required 15% total. Additionally, this allows projects to double count the number of Very Low-Income units to not only reduce the overall number of Inclusionary units provided, but to also achieve a higher density bonus per State law.

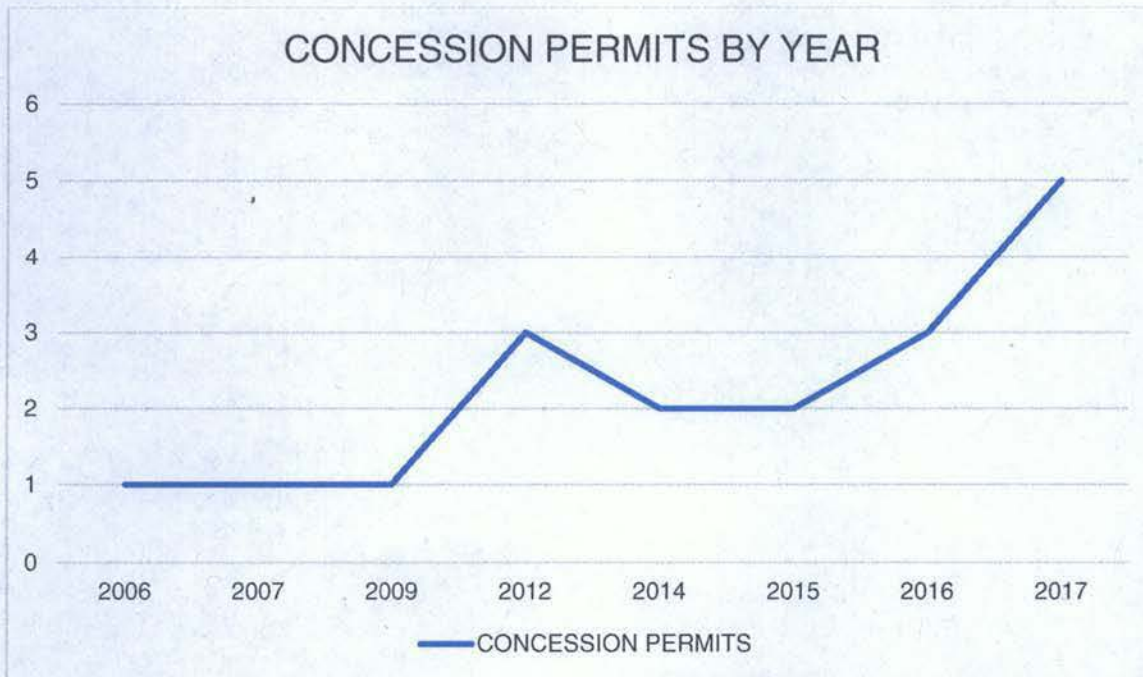
The current Ordinance also allows the developer the option to provide Very Low-Income units in for-sale projects to satisfy the Inclusionary percentage. To the extent allowed by State law, staff recommends that this regulation be revised or eliminated.

Another potential revision might be to increase the inclusionary percentage requirement for projects that elect to provide the inclusionary units off-site. While these are just a few examples, it is recommended that staff engage the community and the Planning Commission regarding this evaluation process.

Unintended Consequences – An Affordable Housing Concession Menu

Staff acknowledges that an increase in the inclusionary housing in-lieu fee may affect the calculus for project developers when they are considering whether to build the units on-site, pay the in-lieu fee, or comply with the inclusionary housing ordinance in one of the alternative options provided in the ordinance. Coupled with the increased percentage of inclusionary units that is recommended, developers may ultimately decide it is more beneficial to build the inclusionary units on-site, and in doing so, become eligible to take advantage of higher State density bonus percentages and seek additional Affordable Housing Concession Permits.

While the City does not process an inordinate amount of Concession Permits, as indicated in the chart below, the City has seen annual increases in the number of these types of projects and staff expects this trend to continue, irrespective of any increases to the required inclusionary percentage, in-lieu fee or other changes to the City's ordinance.



Moreover, in recognition of the State's housing crisis, new laws will undoubtedly be enacted to continue to streamline development with potential to further erode local control. For the time being, the City's inclusionary percentage and in-lieu fee remain within Council's purview and these changes further the City's goals with respect to increasing affordable housing in the City. Staff also recognizes that if the City is seeking to produce more affordable housing, market realities dictate that certain concessions must be made in order for this to occur absent a direct subsidy from the City. In light of this, the final recommendation is the creation of an Affordable Housing Concession Menu.

Under current State density bonus law, and depending on the amount of affordable housing provided, a developer may request between one to three concessions from development standards such as height, floor area ratio, density, setbacks, and other provisions, in any amount that the developer indicates is necessary to make the construction of affordable housing units financially feasible. Pursuant to state law, the burden is then upon the City's review authority to determine that the requested concessions do not result in "identifiable and actual cost savings" "to provide for affordable housing costs." If the City cannot make this finding based on substantial evidence, the requested concessions must be approved. This results in a high degree of unpredictability for both the City and the developer due to the range and variety of concessions that could be requested and the discretionary review process that the Affordable Housing Concession Permit process entails.

The Affordable Housing Concession Menu is intended to provide predictability for both the City and the developer by incentivizing development that is more in line with the City's regulations with respect to scale and massing. This approach recognizes that, while the City cannot supersede State density bonus law, it can offer incentives to developers to limit the extent of concessions that are requested. The menu would consist of a number of specific concessions of lesser intensity than would otherwise be available under State law. The menu would become an option available to developers in exchange for a more streamlined review and approval process. The following are some general examples of the concessions that might be on an Affordable Housing Concession Menu:

- Increase in allowable height up to a certain amount in portions of the building, provided that the average building height does not exceed a maximum threshold;
- Increase in allowable floor area ratio up to a certain amount;
- Reduction in required setbacks;
- Consolidated Design Review; and/or
- Other deviations from the code that do not result in increased height or FAR.

In exchange for limiting the request for concession to the options on the pre-approved menu, a developer would then qualify to obtain the Affordable Housing Concession

Permit through a ministerial process, rather than going through a discretionary process. It is often the case that the savings in time and entitlement costs, as well as increased predictability, are highly valuable to developers, and these considerations would seek to incentivize the developer to seek less impactful concessions than might otherwise be available through State density bonus law. Similar to the process identified above, staff recommends that the development of a "concession menu" receive community input through the Planning Commission.

CONCLUSION:

In light of the challenges associated with State-mandated density bonus laws and the potential ramifications of falling out of compliance with the City's Housing Element, staff recommends focusing on improving the balance between the incentives given to developers through State density bonus law and the actual production of affordable housing units. To achieve this balance, staff has recommended focusing on improving the City's inclusionary housing ordinance by increasing the inclusionary in-lieu fee, increasing the inclusionary housing percentage requirement, and making amendments to the inclusionary housing ordinance, including eliminating trade-downs to ensure the highest number of units possible are produced. Staff also recommends establishing an Affordable Housing Concession Menu in order to incentivize developers to opt for a more defined set of reasonable concessions to minimize the impacts of density bonus projects on the character of the City's neighborhoods. Staff is seeking further direction from the City Council on these strategies, as well as direction to initiate a Zoning Code Text Amendment to implement them. If the City Council initiates the Zoning Code Amendment, staff would present a series of recommended amendments to the Planning Commission for its consideration and recommendation to the City Council.

ENVIRONMENTAL ANALYSIS:

The actions proposed herein will result in planning studies related to potential changes to the City's Inclusionary ordinance. Any actual changes to the zoning code will be discussed in a future public hearing for consideration by the City Council. These planning studies are statutorily exempt from the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15262, which applies to feasibility or planning studies for possible future actions. The inclusionary in-lieu fee, which is also discussed in this report, is the subject of a separate public hearing this evening.

FISCAL IMPACT:

The proposed increase to the inclusionary housing in-lieu fee would result in additional revenue from those projects that choose to pay the fee rather than build units on-site or comply by other means. There is a possibility that the increased fee would incentivize developers to build on-site units rather than pay the higher fee, however it is anticipated that the higher fee revenues from those who choose to pay the fee would offset the loss of revenue from those who choose to build on-site units.

Respectfully submitted,




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Attachment: (1)

Attachment A – Draft letter from California Department of Housing and Community Development, Received
July 6, 2018