

Agenda Report

June 11, 2018

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

SUBJECT: CONSIDERATION OF AN INTERIM ORDINANCE TO REDUCE ALLOWABLE BUILDING CAPACITY

RECOMMENDATION:

It is recommended that the City Council:

- 1) Find that the proposed action is not a project subject to the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and Sections 15060 (c)(2), 15060 (c)(3), 15378, and 15305 of the State CEQA Guidelines and, as such, no environmental document pursuant to CEQA is required for the action; and
- 2) Direct the City Attorney to return to the City Council at the earliest practical date with an ordinance implementing Option 1 to reduce maximum allowable height as described in this report.

EXECUTIVE SUMMARY:

At its meeting of April 9, 2018 the City Council directed staff to develop short and long-term policy solutions that would reduce the intensity and impacts of new development projects and increase the production of affordable housing City-wide. This report offers options to reduce building heights and/or density on an immediate and interim basis; discusses a concept for zoning regulations that require community benefits in exchange for additional development intensity as a longer-term solution; and explores the possibility of increasing the City's inclusionary housing requirement. This report is intended for the City Council to consider the various policy proposals offered by staff and provide direction as to which, if any, elements should return in the form of an ordinance for the City Council's consideration at a future meeting.

BACKGROUND

On April 9, 2018, Planning and Community Development Department staff presented a study session discussion regarding growth and development in Pasadena. The presentation covered growth management efforts in the City, including the General Plan that was updated in 2015. Staff also provided an overview of state legislation relating to housing development such as density bonus, trends in density bonus projects and affordable housing concession permits issued by the City pursuant to state law requirements.

The City Council expressed some concerns regarding recent higher-density development projects and those currently in the pipeline, including some that received affordable housing concession permits for additional height and/or density in exchange for providing affordable housing units. A major concern was that the projects did not provide sufficient affordable housing to warrant the benefits of the concessions they received, and that the City should require additional public benefits in exchange for higher densities and additional height. The overall sentiment was that recent higher-density developments are not consistent with the character of the City.

Rather than waiting for the completion of the Specific Plan updates, which are underway and scheduled for completion by 2021, the City Council directed staff to address these issues immediately. The Council provided the following direction to staff:

- Develop a legislative strategy to present to state lawmakers that would address Pasadena's specific concerns;
- Prepare a short-term/interim ordinance that would reduce development intensity City-wide and stop developments that are out of character with the existing neighborhood context;
- Craft a long-term regulatory framework that would require developers to provide various community benefits, including more affordable housing, in order to reach the maximum densities allowed in the General Plan; and
- Explore ways to obtain more affordable housing units, including possibly increasing the City's inclusionary housing requirements.

Study sessions on the same topic were held with the Planning Commission at its April 11 and April 25 meetings to obtain input on responding to the City Council's direction. The Planning Commission expressed that staff should study these issues further before developing major policy changes.

DISCUSSION:

Interim Measures to Reduce Development Intensity

Consistent with the City Council's direction, Planning and Community Development staff has developed several concepts for reducing development intensities on an interim basis until such time that more comprehensive changes can be studied and implemented.

Developing a Regulatory Framework

Pasadena encompasses a relatively large geography with numerous unique areas, neighborhoods, and districts. This diversity of places is reflected in the City's Zoning Code, which contains development standards that vary greatly depending on a particular location or development type. As a result, it would take an enormous work effort to review each development standard, evaluate the appropriate adjustment in allowed development intensity, and implement these adjustments to result in projects that are compatible with the character of those areas. Such an effort would take considerable time, which would not be consistent with the City Council's direction for timely action, and much of the effort would be duplicative of ongoing work already being done as part of the Specific Plan updates and accompanying Zoning Code changes.

Furthermore, based on the comments provided by the City Council at its April 9, 2018 study session, it became apparent that what most affects compatibility of a new building within an existing neighborhood context is the height of the building. In other words, new buildings that are much taller than the existing buildings tend to appear more massive and out of scale, regardless of the number or size of units in the building. Finally, it appeared that the City Council's focus was on larger multi-family residential or mixed-use projects that include housing, since those are the most common development types recently constructed and currently in the pipeline. Therefore, staff has developed multiple options in response to the City Council's direction, further described in the subsection below.

Options for Reducing Development Intensity

Option 1 (Staff Recommended):

The first option consists of an interim measure that would limit the maximum height of new buildings City-wide to no more than ten feet taller than the average height of existing buildings along the same block-face on which the new building is to be located, or the maximum height set forth in the Zoning Code, whichever is lower. This approach affords flexibility for new development to better respond to the context of the existing built environment while still ensuring that new buildings do not result in drastic or sudden changes in character. This option would allow the same density currently allowed in the Zoning Code, thereby continuing to allow development of new housing units and avoiding potential conflict with the adopted Housing Element or State legislation.

In addition, staff also considered alternative options as described below, pursuant to the City Council's direction:

Option 2:

The second option consists of an interim measure that would also reduce the maximum height currently allowed by the existing Zoning Code, but by a fixed amount of ten feet for all sites in the City, unless such a reduction would result in a maximum height less than 30 feet or three stories. This option would help to alleviate the visual effects of

overly massive development by reducing allowed building heights in excess of three stories by approximately one story, and would be the most straightforward to implement. Another benefit of this option is that since it also only reduces allowed height, and not residential density, it addresses the issue of massing without directly reducing the number of housing units that could be built. Similar to Option 1, this reduces potential conflicts with the City's adopted Housing Element and State legislation aimed at prohibiting cities from discouraging creation of housing units.

Option 3:

Should the City Council seek to reduce allowed residential density as well as allowed building height, the third option is an interim ordinance that would result in a City-wide reduction of allowed residential density in conjunction with a reduction in height as described in either Option 1 or Option 2. While this option would result in the highest reduction in both building massing and development intensity, there is some potential that it would be in conflict with the City's ability to meet its Housing Element goals, and consequently could result in conflict with State law depending on the amount of density reduction the City Council ultimately decides upon. For these reasons, which are discussed further in the following section, staff does not recommend this option.

Trade-Offs and Regulatory Considerations

As with any policy decision, implementation of an interim ordinance such as the ones described above would result in trade-offs. For example, in Option 1 and Option 2, the allowed density or number of residential units would remain the unchanged while the allowed height would decrease. This could lead to the development of smaller units than would otherwise have been built had the additional height been granted, which could be more affordable than larger units. Alternatively, these options could result in units of the same size but fewer in overall quantity so as to fit into the reduced height envelope. As described above, one benefit of Option 1 and Option 2 is that they do not directly reduce the allowed density, which reduces the likelihood that the interim development standards conflict with the City's adopted Housing Element, prevent progress toward meeting the City's Regional Housing Needs Allocation (RHNA), or conflict with other State legislation that is aimed at reducing cities' ability to restrict new housing production.

With respect to the City's Housing Element, the City's share of the RHNA for the current planning period is 1,332 new housing units over the course of seven years. As of 2017, the City has a remainder of 540 RHNA units to accommodate during the planning period. Under Option 3, a City-wide reduction in allowed density would reduce the number of sites available to accommodate the City's remaining RHNA and would most likely result in fewer housing units being built. Furthermore, recent State legislation would also result in increased scrutiny of the Housing Element from the State Housing and Community Development Department (HCD), potentially leading to de-certification of the Housing Element if the City adopts development standards that prevent Housing Element sites from developing at the designated density shown in the Housing Element. Further study is required to determine to what extent densities can be reduced without being in conflict with the Housing Element and relevant state law.

Interim Ordinance Timeline and Findings

State law set forth in Government Code Section 65858 provides for cities to adopt, as an urgency measure, an interim ordinance that prohibits any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying. Such interim ordinances require a four-fifths vote of the City Council for adoption, and if passed, would be valid for 45 days from the date of adoption. Any development standards included in an adopted interim ordinance would not apply to pipeline projects that were deemed complete prior to adoption of the ordinance, but they would apply to other projects throughout the duration of the measure.

If specified findings are made, the interim measure may then be extended for up to 22 months and 15 days, resulting in a total effective period of 24 months from initial adoption of the interim ordinance.

In order to adopt such an interim ordinance, the City Council must make the finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with the zoning ordinance would result in that threat to public health, safety, or welfare. Furthermore, if the interim ordinance has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (where multi-family housing consists of at least one third of the total square footage of the project), the interim ordinance may not be extended beyond the initial 45-day period unless additional findings are made as follows: (1) the continued approval of multifamily projects would have a "specific, adverse impact" on the public health or safety; (2) the interim ordinance is necessary to mitigate or avoid that specific, adverse impact; and (3) there is no feasible alternative to mitigate or avoid that impact as well or better, with a less burdensome or restrictive effect. For purposes of the findings to extend an interim ordinance, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact that is based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

Recommendation and Next Steps

Based on these considerations, staff recommends that the City Council proceed with an option that focuses on reducing height rather than density. In particular, staff recommends Option 1 as described in this section. This option achieves the primary objective of reducing the massing of buildings and thus the feeling of overly intense development, while minimizing any potential conflicts with the adopted Housing Element or State law. Option 1 is a more flexible approach to height reductions that maintains neighborhood character while substantially reducing building height and massing.

Staff also recommends a two-step approach for ordinance adoption, should the City Council choose to move forward with one of these options. First, staff recommends that

the City Council direct the City Attorney to prepare an interim ordinance to be brought back to the City Council for adoption on an urgency basis at the earliest possible date. Second, staff recommends that the City Council direct the City Attorney to concurrently prepare a draft non-urgency, non-interim ordinance to be presented to the Planning Commission for their input at the earliest possible meeting date with public notice. Subsequent to the Planning Commission's review, the non-urgency, non-interim ordinance would be brought back to the City Council for a noticed public hearing, and would follow the normal course of procedure for adoption of an ordinance (first reading, second reading, and publishing). This is to ensure that the provisions of the ordinance would remain effective in the event that the urgency/interim ordinance does not get extended past the initial 45-day effective period.

Long-Term Approach

Specific Plan Update Process

Since late 2017, staff has been working with various consultants and conducting community outreach as part of the overall effort to update all of the City's Specific Plans. As part of this work program, changes are contemplated to the goals and policies of the existing Specific Plans as well as the Zoning Code. These changes represent a key opportunity to implement long-term development controls for the Specific Plan areas, which are the key areas of the City that have seen the majority of new development in recent years. One concept that has emerged from staff's research, community outreach efforts, and from comments from the City Council, is a framework for the review of future projects that could be termed 'Community-Oriented Developments'. These types of projects can be described as new developments that are responsive to the needs and desires of the community in which the development takes place, and can be achieved through a coordinated set of regulations and incentives. For example, a menu of desired community benefits could be developed based on community input for a particular area, and zoning regulations can be crafted to incentivize developers to incorporate these community benefits into their projects in order to be able to build at the higher intensities identified in the General Plan.

As staff and consultants continue working through the process of updating the City's Specific Plans and Zoning Code, the 'Community-Oriented Developments' framework will continue to be refined based on ongoing outreach efforts, market analysis, and urban planning best practices. This approach could be an effective tool in controlling the intensity of future development in Pasadena according to the unique community needs, desires, and visions for each Specific Plan area.

Recommendation

Since the majority of recent development projects and potential future development capacity is within the City's Specific Plan areas, staff's recommendation is to continue working through the Specific Plan Update process to further refine the framework of 'Community-Oriented Developments' as a long-term approach to mitigating the impacts of higher intensity projects.

Increasing the Inclusionary Housing Requirement

When the City of Pasadena first adopted its inclusionary housing ordinance in 2001, it was among a relative few cities throughout California to have such an ordinance. In the 17 years since its adoption, many other cities throughout the state have since also adopted versions of an inclusionary housing program, making inclusionary housing more mainstream. During that time, there have also been many changes to the regulatory and market context surrounding housing affordability. Recognizing the need to revisit and update the City's inclusionary housing program as part of the goal of increasing affordable housing production, the City Council also directed staff to bring forward potential increases to the City's existing inclusionary housing requirement during the April 9, 2018 study session.

Current Inclusionary Housing Requirements

Under the existing inclusionary housing ordinance, a minimum of 15% of the total number of dwelling units in a residential project are required to be developed, offered to, and sold or rented to households of low and moderate-income, at a correspondingly affordable cost. The level of required affordability varies depending on whether the units are rental or for-sale, and incentives are in place that give more credit to lower-income units when they are used to satisfy the requirement for low- or moderate-income units. Additionally, the existing inclusionary housing regulations allow various alternatives to providing the affordable housing within the project. For example, a fee can be paid in-lieu of building the units; affordable units can be built or substantially rehabilitated off-site; or land can be dedicated to the City for the development of affordable housing.

Considerations for Increasing the Inclusionary Housing Requirements

Increasing the inclusionary housing requirement would result in additional resources for producing affordable housing in Pasadena, whether by developers building the units as part of their projects, or by providing in-lieu fees, land dedications, or off-site units. Changes to the ordinance could include increasing the percentage of total units required to be affordable, increasing the amount of in-lieu fees, or changing the incentive structure to provide lower-income units depending on what the City's goals are. However, it is important that these changes be informed by the realities of the real estate market so that increases to the inclusionary percentage or in-lieu fees are calibrated appropriately to achieve the desired results without constraining housing production as a whole.

It should also be noted that the State legislature recently adopted AB 1505, which is directly related to inclusionary housing ordinances. If a City adopts an ordinance to increase the inclusionary housing requirement to more than 15% of the total number of units in the development, AB 1505 authorizes HCD to require that the City provide evidence that the inclusionary ordinance does not unduly constrain the production of housing by submitting an economic feasibility study that meets specified standards. If HCD finds that economic feasibility study does not meet these standards, the bill would require the City to limit its inclusionary housing requirement to no more than 15% of the total number of units in the development.

Recommendation

Staff recommends that an economic feasibility study be conducted consistent with the standards set forth in AB 1505 prior to any increase to the inclusionary housing ordinance. It is not recommended to increase the existing 15% inclusionary housing requirement without evidence that development would remain feasible in the City, notwithstanding the affordability requirements. Nevertheless, staff has recently performed the necessary analysis to support an increase to the City's inclusionary housing in-lieu fee, and staff will be bringing a recommendation forward prior to the end of August.

ENVIRONMENTAL REVIEW:

The action proposed herein is the consideration of interim regulatory measure to reduce the potential maximum intensity of future development projects in the City, and permanent regulatory changes to affordable housing requirements. This action does not actually approve any development proposal, and therefore is not a "project" subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060 (c)(2), 15060 (c)(3), and 15378. Furthermore, the proposed action is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed interim measures would inherently reduce any potential environmental effect. As each future project might move through the land use permitting process, its potential environmental effects will be analyzed under CEQA. Moreover, the action is exempt from CEQA under State CEQA Guidelines Section 15305 as a minor alternation in land use limitations that does not change the permitted use or density of properties.

CONCLUSION:

Staff has developed various options for interim measures applicable to multi-family residential and mixed-use projects City-wide to address the City Council's concerns regarding intensity of new development and their impacts to the character of existing neighborhoods. Of the various options, staff recommends an approach that focuses on the allowed heights of buildings rather than the allowed density. As a longer-term solution, staff recommends further evaluating a 'Community-Oriented Development' approach to zoning regulations City-wide through the continuation of the Specific Plan update program. Finally, with respect to potential increases to the City's inclusionary housing requirements, staff recommends that further economic feasibility studies be done consistent with State legislation to ensure that any changes to the inclusionary ordinance remain enforceable and achieve the desired results of increasing the production of affordable housing. Finally, staff is prepared to return before the end of August with potential increases to the inclusionary housing in-lieu fee.

FISCAL IMPACT:

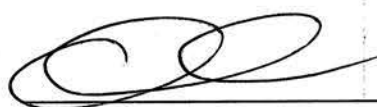
There is not a direct fiscal impact associated with the consideration of the proposed policy changes. There is, however, the potential for a reduction in development impact fees collected if the policy changes result in reduced development activity throughout the City.

Respectfully submitted,



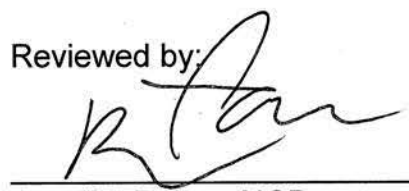
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