

Agenda Report

May 10, 2021

TO: Honorable Mayor and City Council

FROM: Planning & Community Development Department

**SUBJECT: ONE YEAR REVIEW OF INCLUSIONARY HOUSING ORDINANCE
UPDATES AND AFFORDABLE HOUSING CONCESSION MENU FOR
DENSITY BONUS PROJECTS**

RECOMMENDATION:

This report is for information only, there is no action required by the Council.

EXECUTIVE SUMMARY:

In August 2019, the City Council adopted an ordinance to amend the City's Inclusionary Housing Ordinance ("IHO") and create an Affordable Housing Concession Menu ("Menu"). These amendments resulted in increasing the inclusionary requirement from 15% to 20%, eliminating trade-downs, and requiring very low income units as part of the IHO. The Menu established a set of concessions that would be available to projects utilizing State Density Bonus Law ("SDBL") without the requirement to obtain an Affordable Housing Concession Permit ("AHCP"), provided that the project complied with the inclusionary requirements by providing the affordable units on-site. Upon approval of the ordinance, the City Council also directed staff to return after one year to provide an update on the ordinance and make further recommendations as appropriate in order to achieve the combined goals of increased affordable housing production and preservation of an appropriate scale of development throughout the City. This report provides an overview of implementation of these measures, and outlines potential amendments to the Menu in order to clarify intent and provide more certainty for developers and neighborhoods alike. A study session on this topic was conducted with the Planning Commission on August 12, 2020, and the Planning Commission recommended approval of these amendments during a public hearing on January 27, 2021.

ADVISORY COMMISSION/BOARD/CITY COUNCIL COMMITTEE RECOMMENDATION:

After a study session held on August 12, 2020 and a public hearing held on January 27, 2021, the Planning Commission recommended that the City Council find that the Zoning Code Amendments are exempt from CEQA and approve the amendments that would clarify the IHO requirements and update the Menu as recommended by Staff.

BACKGROUND:

Zoning Code Amendments

In early 2019, the City Council expressed concern about the increasing use of concessions and incentives by developers under SDBL to exceed the established height, scale, and massing regulations that had been codified in the City's Zoning Code. While SDBL requires developers to provide a certain percentage of affordable units in their projects in order to qualify for concessions, the amount of units required was seen as disproportionate to the impact of these concessions, especially since the City's existing IHO already required affordable units to be included with new multi-family residential developments. As a result, the City Council directed Staff to make recommendations that would achieve the dual goals of increasing affordable housing production while encouraging new development projects to be designed at a scale and mass that better fits within the expected character of various neighborhoods.

Inclusionary Housing Ordinance

In August 2019, after extensive community outreach and market/feasibility analysis, the City Council approved various amendments to the IHO. These included an increase to the overall inclusionary requirement from 15% to 20%, with minimum affordability percentages for rental projects consisting of 5% Very Low Income, 5% Low Income, and 10% Moderate Income. The amendments also included the elimination of "trade-down" provisions, which previously allowed developers to provide a lesser overall number of affordable units in exchange for deeper affordability. This practice, combined with SDBL, typically resulted in a lesser number of affordable units while still allowing the use of multiple concessions, or relief from otherwise required development standards. Finally, the amendments also included changes to the inclusionary in-lieu fee, resulting in increased fees for nearly all project types throughout the City. These changes to the IHO, with the exception of the increase to the in-lieu fees, became effective on December 7, 2019. The increase to the in-lieu fees became effective six months later on February 19, 2020, applying to any project that had not obtained building permits by that date.

Affordable Housing Concession Menu

Along with the changes to the IHO, the creation of the Menu was intended to address the other concern expressed by the Council – that new development projects utilizing SDBL were out of scale with the intended character of the City's neighborhoods. Staff's approach was to incentivize developers to choose from a pre-determined set of concessions that are more limited in scope and intensity, in exchange for avoiding the lengthy, costly, and at times unpredictable process of obtaining an Affordable Housing Concession Permit ("AHCP"), which would otherwise be required to obtain concessions under SDBL. The intent was to encourage developers to lessen the impact of their projects, and create certainty by not requiring an AHCP for projects selecting up to two

concessions from the Menu, thereby offsetting costs. To be eligible for the Menu, the project would need to comply with the new IHO by building the required affordable units on-site. These projects would still be subject to the Design Review process and CEQA review.

To identify the appropriate concessions for the Menu, Staff analyzed past AHCP applications, conducted outreach with developers, and worked with a consultant to perform market and feasibility analyses to determine how much incentive was necessary to make projects financially feasible with the new inclusionary requirements. This analysis resulted in the set of five concessions that were ultimately adopted by the City Council (Attachment B). During the City Council's deliberations on the Menu, several Councilmembers raised the question of whether the concessions offered on the Menu were enough of an incentive for a developer to choose them over the more generous SDBL option, regardless of the additional time and cost associated with obtaining an AHCP. Thus, upon approving the ordinance, the Council directed Staff to monitor the implementation of the Menu and return after one year with an assessment and recommendations on whether additional incentives are necessary.

Changes to State Density Bonus Law

Assembly Bill 2345, which was signed into law in September 2020, is designed to increase the incentives for developers to utilize SDBL by granting a greater percentage of density bonus for the amount of affordable units provided, and lowering the threshold for projects to qualify for multiple concessions. Previously, SDBL allowed up to a maximum of 35% bonus over the base density in exchange for a percentage of overall units being set aside as affordable at various levels. To qualify for the maximum 35% density bonus under previous law, a project would need to set aside 40% of total units as Moderate-Income, 20% as Low Income, or 11% as Very Low Income. AB 2345 maintains these ratios, but increases the maximum density bonus to 50%, which is granted in exchange for 44% Moderate-Income, 24% Low Income, or 15% Very Low Income units.

AB 2345 also revises the minimum amount of affordable units needed to qualify for concessions under SDBL. Previously, a project qualified for two concessions by setting aside 20% of total units for Low or Very Low Income households, and three concessions by setting aside 30%. AB 2345 has lowered those thresholds to 17% and 24%, respectively. The bill also made other various changes to SDBL, such as reducing the maximum parking requirement for density bonus projects, and making clarifications on implementing density bonus for 100% affordable projects. However, the changes most likely to affect Pasadena's IHO and Menu are those that provide greater density bonus and lower the threshold for concessions, as these would compete with the attractiveness of the local Menu of concessions, potentially making it less likely that a developer would choose to use the Menu rather than apply for an AHCP.

DISCUSSION:

Effects of Recent Code Amendments

Inclusionary Housing Units

When the increase in the inclusionary housing requirement became effective in December 2019, there were seven development projects in the entitlement pipeline that were affected by the increase. This increase resulted in at least 17 net additional affordable units being required from these seven projects. Furthermore, the elimination of trade downs further increased the net gain of affordable units, assuming at least some projects would have otherwise taken advantage of trade downs. So far, all of the projects that were in the pipeline and were required to increase their inclusionary set-asides are still proceeding through the development process, indicating that the increase has not discouraged housing projects from being proposed. However, it will be important to continue monitoring these projects through the approval process until building permits are issued in order to determine conclusively if this is the case.

It is also important to note that new projects submitted after the increased inclusionary requirement became effective will now be responsible for providing more affordable units than they otherwise would have under the prior requirements. Since the increase became effective, four new multi-family residential projects have been proposed that will be subject to a 20% inclusionary requirement. This will result in a net increase of 23 to 51 additional affordable units from these four projects as compared to what they would otherwise have provided under the prior inclusionary ordinance.

In addition to the increase in total affordable units, the updated inclusionary requirement also includes a mandatory set-aside for Very Low Income units, whereas the prior requirement only incentivized Very Low Income units with trade-downs. Projects utilizing trade-downs under previous rules would have also provided a lesser total number of affordable units. While each project may vary in its allocation of units by income category, it can be concluded that the updated requirement will result in a higher number of total affordable units with a wider distribution of income categories.

Density Bonus and Concessions

Between December 2019 and January 2021, only one new AHCP application was submitted to the Planning Department, however this project also required approval of a Conditional Use Permit, and therefore would not have benefitted from the faster processing time by choosing to use the Menu. Also during this period, one project that was in the pipeline as an AHCP application has converted to using the Menu rather than utilizing SDBL. This project consists of 181 Single-Room Occupancy ("SRO") units located at 274-282 N .Oakland Avenue, and is seeking to use the FAR concession on the Menu for a net increase of 0.37 FAR. There was also concern that making the Menu a viable option would incentivize projects that originally were not seeking any concessions at all, to opt into the Menu and increase the size and scale of their projects. During this period, there have been no such conversions of non-concession projects in the pipeline. Finally, there have been five new applications filed using the Menu during this time period, and of those only one project is seeking a height concession while the remainder have requested FAR, parking, setback, and loading concessions.

The results after one year of implementation of the Menu indicate that it is somewhat attractive to developers, often depending on the particular site conditions and whether the menu options fit within the needs of the project design in order to make it feasible. While it is noteworthy that no new AHCP applications were submitted during the first year of the Menu's implementation, it cannot yet be concluded that this is fully due to the usability and attractiveness of the Menu. More time will be necessary in order to determine the underlying reasons for the slowing of AHCP applications, which may be driven more by land and development costs, housing demand, and broader economic influences such as the COVID-19 pandemic.

Further Changes to Inclusionary Requirements

Family Units and SRO Projects

During the City Council's discussion of the IHO amendments in 2019, some Councilmembers suggested that the IHO or Menu could be crafted to incentivize or require the creation of more affordable, family-sized units, such as those with at least three bedrooms. There are two potential approaches to achieve this goal. The first approach could be to simply set a minimum requirement for all projects to set aside a certain number or percentage of affordable units. On the other hand, family units could be incentivized rather than mandated by allowing the use of more than two concessions from the Menu, or increase the concessions themselves, if a project includes a certain number of three-bedroom or larger units at specified income levels. While these are both potentially viable approaches, further financial and market analysis would be helpful in determining the actual demand for larger units, as well as how much additional incentive would be necessary to offset the costs of setting aside larger units as affordable. There is further uncertainty around the attractiveness of the Menu due to AB 2345 and potential changes in the housing market resulting from the COVID-19 pandemic. For these reasons, Staff recommends continued monitoring of the effects of the recent amendments and State legislation on local housing production, and the preparation of updated financial and market analysis prior to making further changes to the IHO and Menu.

Councilmembers also expressed interest in whether SRO projects should be required to provide a higher percentage of affordable units under the IHO, due to the more flexible nature of the development standards that allow a higher number of total units in those projects. It should be noted that nearly all SRO projects that have been built in the City already consist of mostly affordable units, either because those projects are already 100% income-restricted affordable, such as the YMCA permanent supportive housing project, or the units are already more affordable than standard studio or one-bedroom units due to their smaller size. Finally, similar to the issue of family sized units, the recent changes to the IHO and Menu as well as the passage of AB 2345 warrant further monitoring and data collection prior to concluding whether or not new SRO projects can support a higher inclusionary requirement without becoming infeasible or requiring substantial concessions that are out of line with the community's and City Council's expectations.

Clarifying Calculation of Inclusionary Requirements

Developers often leverage the affordable units required by the IHO to obtain a density bonus under SDBL. Pasadena's local IHO requirements are calculated using a project's base density prior to the addition of density bonus units, a methodology that is consistency with SDBL. For example, if the base zoning regulations allowed a density of 100 units on a property, the inclusionary requirement would be 20% of 100 units, or 20 units. Even if the developer chose to use SDBL and apply a 35% density bonus, while the total number of units would increase to 135, the inclusionary requirement would still be 20 units since it is calculated using the base density before applying density bonus.

However, the language in the Zoning Code states that the inclusionary percentage is applied to the ***total*** number of dwelling units in a project, which could be interpreted to mean the base density plus density bonus units. It is Staff's interpretation that this language was written at a time when SDBL was not frequently used by applicants and therefore it was not anticipated that this language could lead to an inconsistency with SDBL. However, now that SDBL is frequently used in conjunction with the IHO, clarifying the language to differentiate the calculation methodology for density bonus projects would reduce confusion, improve transparency, and make implementation easier.

Improving the Affordable Housing Concession Menu

As discussed in this report, it cannot be conclusively determined yet whether the Menu is solely responsible for the recent slowing of AHCP applications and lack of new density bonus projects seeking major concessions. However, after a year of implementing the Menu on actual project submittals, Staff has identified several areas where improvements can be made in order to clarify the intent of the concessions on the Menu, and provide greater certainty for developers as well as the community in terms of what can be expected from projects using the Menu. These issues and recommended changes are described in more detail below.

Setback Concessions

Some applicants have been unclear as to whether asking for a 50% reduction of side yard setback requirements for two side yards or a side yard and rear yard would count as multiple concessions. Staff's interpretation of this question is that a side yard setback reduction is distinct from a rear yard setback reduction. Therefore, requesting a reduction of a side yard and a rear yard reduction would be considered two concessions. With respect to requesting multiple side yard setback reductions, it should be noted that virtually all lots have at least two side yards, and the Zoning Code always applies a side yard setback standard to all side yards of a site. Therefore, reducing the side yard setback requirement for a site would apply to all side yard setbacks for that site, and would thus count as a single concession. Staff recommends amending the language of the Menu to clarify this issue.

Loading Concessions

The loading concession in the Menu, which allows exemption from any loading space requirements, was originally written intending to be interpreted as broadly as possible in order to allow relief from loading space requirements that typically act as barriers to construction feasibility or add significant cost to a project. Since implementation, a review of development projects indicates that the most troublesome loading issues are typically those that require too many loading spaces, spaces that are larger than needed, or height clearances that cause additional excavation in a subterranean structure. Waiving these standards has a direct relationship to construction feasibility and cost, and developers often have a better understanding of their own project's loading needs. Other standards, however, are more relevant to the preservation of neighborhood character, and therefore waiver of those requirements may result in greater impacts to surrounding neighborhoods. These include requirements for screening and prohibiting loading spaces from being located in required setbacks, or requirements to have adequate ingress and egress and prohibiting backing out onto public streets. Staff recommends removing the ability to obtain a concession from those standards in the latter category from the Menu. Additionally, there has been uncertainty as to whether requesting a waiver from multiple loading requirements constitutes one or more concessions. It is staff's interpretation that the language of the concession indicates that multiple loading requirements can be waived under a single concession.

Height Concessions

The current language in the Menu for height concessions includes specific guidance for applying the concession to areas that allow height averaging. The terminology used in the menu was inadvertently inconsistent with the terms in the Zoning Code relating to height standards in the Central District Specific Plan, which is the only area where height averaging is currently allowed in the City. In these areas, the Zoning Code establishes a "Maximum Building Height" and a "Maximum Building Height utilizing height averaging." The latter term refers to the additional height permitted over no more than 30% of the building footprint on a development parcel, provided that the average height of that footprint does not exceed the otherwise required "Maximum Building Height." It was the intent of the height concession on the Menu to only apply to the "Maximum Building Height."

Height Concessions in City of Gardens

When the language for this concession was written, it was primarily intended to address larger multi-family or mixed-use projects where height was regulated by a numeric maximum height measurement. After a year of implementation, it has become clear that the existing language does not adequately address the nuances of height standards for other types of multi-family projects, particularly those included in City of Gardens standards. Examples of these nuances include provisions that regulate both the maximum height and number of stories in certain portions of a site, or that regulate maximum plate height and maximum ridgeline height, and provisions that allow

additional height with Design Review approval. Allowing the Menu to grant concessions from these types of regulations could result in unintended consequences by disrupting these interconnected and nuanced regulations that were designed to work together to minimize massing in a very specific way in the City of Gardens neighborhoods. As such, Staff recommends various amendments to the height concession language in the Menu to specifically address the applicability of the height concession to City of Gardens standards.

Developer Feedback

Following the January 27, 2021 Planning Commission hearing, staff received additional feedback from applicants of development projects in the City, who suggested that the Menu could remain a desirable tool for developers with two possible changes. These include offering three concessions rather than two, and adding a new open-ended concession that could apply to any other form-based regulation not already identified on the Menu. There was a suggestion that the open-ended concession could be applicable only to projects located in the Central District, exclude properties adjacent to historic resources, and could be reserved only for projects that exhibit exceptional architectural qualities as determined by Design Review.

CONCLUSION AND RECOMMENDATION:

Per the City Council's direction, staff has presented this one-year review of the implementation of the Zoning Code Amendments adopted in 2019 that increased the inclusionary housing requirements and created an affordable housing concession menu. Based on this review, it appears that the amendments have been working relatively well and as intended. They have not slowed or stopped production of housing in the City, have not caused a sudden influx of more affordable housing concession permit projects with increased height, and in some cases, have been enough of an incentive for projects to choose concessions on the menu rather than seeking additional relief through SDBL. While there may be ways to incentivize certain desirable housing types, such as affordable family-size units and affordable SRO's, more observation and market/feasibility analysis is needed to assess how that can be accomplished. These changes may also be affected by recently enacted State legislation that provides more generous density bonuses. Finally, based on practical experience working with the amendments over the past year, Staff has identified several clean-up items that would assist in implementation of the Menu. These cleanup items are presented in this report and were recommended by the Planning Commission for approval. The proposed amendments will be brought to the City Council for a public hearing at a future date for consideration and approval.


ENVIRONMENTAL ANALYSIS:

This report is an informational item only, and no action is being considered at this time. Therefore, no CEQA determination is necessary.

FISCAL IMPACT:


There is no fiscal impact as a result of this action and will not have any indirect or support cost requirements. The anticipated impact to other operational programs or capital projects as a result of this action will be none.

Respectfully submitted,



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