

Agenda Report

December 5, 2022

TO: Honorable Mayor and City Council
FROM: Planning & Community Development Department
SUBJECT: APPLICABLE DENSITY FOR DENSITY BONUS PROJECTS

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the action proposed herein is exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA"), State CEQA Guidelines Section 15060(c)(1); and
2. Adopt Resolution No. ____, a Resolution Regarding the Determination of Base Density in Density Bonus Projects, acknowledging that, as of January 1, 2023, State Law (specifically the passage of AB 2334 (Chapter 653, Statutes of 2022)) will require that the greatest maximum density allowed for a site in the Land Use Element, Zoning Code, or applicable Specific Plan must be considered as the base density for housing development projects requesting a density bonus; and
3. Direct staff to immediately develop objective design standards.

BACKGROUND:

The 2015 General Plan Update established land use categories with ranges of densities, with the intent of establishing the appropriate density within the range through the Zoning Code and Specific Plan updates. The General Plan densities range from 0-6 du/acre for single-family designations up to 0-87 du/acre for Urban Housing and Medium and High Mixed Use designations (see Attachment A for the adopted Land Use Diagram).

For housing projects in the City requesting a density bonus, the "base density" for the purpose of calculating the bonus has traditionally been the maximum density identified in the Zoning Code and Specific Plan but not necessarily the maximum allowed by the Land Use Element. For instance, if the Land Use Element specified a density range of 0 to 87 units per acre, but the Zoning Code and Specific Plan allowed a maximum of 48 units per acre, the "base density" was considered to be 48 units per acre. This has been consistent with State Density Bonus Law (SDBL), which currently states that "maximum allowable residential density" (or base density) includes both the maximum density shown in the general plan and zoning code, but that general plan density applies if the

zoning code density is “inconsistent with” general plan density. Since the City’s zoning code density falls within the range of the general plan density, as in the example above, the two are not inconsistent and therefore zoning code density applies.

AB 2334, which was adopted in September of 2022 and goes into effect on January 1, 2023, substantially amends the definition of “maximum allowable residential density,” or “base density,” in SDBL. The amended language states that, if a range of density is permitted, then base density means, “the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project.” Additionally, SDBL states that it shall “shall be interpreted liberally in favor of producing the maximum number of total housing units.” (Government Code Section 65915(r).)

To be consistent with SDBL, the changes to this definition compel the City to revise its approach and allow the base density for any density bonus project to be the greatest maximum density identified for the site in the Zoning Code, Specific Plan or Land Use Element. In the example above, this would mean that the base density would be considered to be 87 units per acre. Under the law, the highest density in each range would apply (not 87 d/u per acre across the city) and the land use designations will remain as adopted.

Note that the City’s inclusionary ordinance would continue to apply to all density bonus projects and require that 20 percent of the units be affordable to very low, low, or moderate income households.

Staff Approach

In recent years, many changes have been made to State Law, dictating how local agencies create policy and process residential projects. SB 330 (2019) states that Cities cannot reduce density in the Zoning Code, Specific Plans, or General Plan, unless a commensurate increase in density is adopted at the same meeting. Further, an increasing number of bills require that only objective standards be applied to residential development projects. To address this, staff recommends the following approach:

Acknowledge (by resolution) that, as of January 1, 2023, state law requires that the maximum density designated for a site in the Land Use Element, Zoning Code or Specific Plan, whichever is the greatest, applies as the base density for density bonus projects. As discussed, this approach ensures that the City processes density bonus projects consistent with State Law and provides clarity to staff and the public on the issue.

Continue to update the Specific Plans in the City. This would ensure that the City continues to prioritize the pedestrian environment, establishes a contextual building envelope, and includes regulations that provide appropriate setbacks, stepbacks, open space, and use regulations.

Immediately develop objective design standards. This would address the increasing number of residential projects that State Law requires to only be subjected to objective standards. The standards would address the design and aesthetics of developments while accommodating legislative requirements. Where applicable, these standards would augment the regulations in the Zoning Code and Specific Plans and provide a clear review and approval process.

Continue to explore refinements to the City's Zoning Code. Recognizing that the City cannot reduce density, explore other tools and refinements to the City's regulations to achieve quality design in line with State Law.

This approach would keep the City consistent with State Law while updating regulations to adapt to the regulatory environment in California. The objective design standards would help to achieve quality urban design consistent with the City's tradition of a strong sense of place and great neighborhoods, as identified in Land Use Element Goal 4: "A safe, well-designed, accessible City with a diversity of uses and forms. These diverse forms include distinct, walkable districts, corridors, and transit and neighborhood villages and cohesive, unique single and multi-family residential neighborhoods and open spaces where people of all ages can live, work, shop and recreate."

ENVIRONMENTAL:

The action proposed herein is exempt from environmental review pursuant to State CEQA Guidelines Section 15060(c)(1). That section provides that actions which do not involve the exercise of a discretionary action by a public agency are not subject to CEQA. The City has no choice but to comply with State Law, and is therefore not exercising any discretion in this regard. Further, this action does not constitute approval of any particular project. As a density bonus project may move forward in the City's approval process, it will be subject to the appropriate environmental review.

FISCAL IMPACT:

This report is will not result in any fiscal impact at this time. Direction to prepare objective design standards may result in a consultant contract that is not anticipated to exceed \$200,000.

Respectfully submitted,




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Approved by:



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Attachments (1)

Attachment A: Adopted General Plan Land Use Diagram