



CITY OF OAKLAND

AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: William A. Gilchrist
Director, Planning &
Building

SUBJECT: Density Bonus Ordinance Update

DATE: October 4, 2021

City Administrator Approval

Date: Oct 19, 2021

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance, As Recommended By The Planning Commission, Amending The Oakland Planning Code To Update Chapter 17.107 Density Bonus And Incentive Procedure.

EXECUTIVE SUMMARY

On June 16, 2021, the Planning Commission recommended that the City Council adopt amendments to the Planning Code to update Chapter 17.107, Density Bonus and Incentive Procedure.

This agenda report describes proposed amendments to align and bring into compliance the City's Planning Code with State Law, and to make additional clarifying amendments to Chapter 17.107.

BACKGROUND / LEGISLATIVE HISTORY

When a developer proposes a housing development with a minimum percentage of below market rate (also called affordable) housing units, per State Density Bonus Law, all California cities and counties must provide a density bonus and other incentives for the production of those below market rate housing units. Every city and county is required to adopt an ordinance that specifies how the jurisdiction will implement State law.

On April 22, 2014, the City Council adopted Ordinance No. 13224 C.M.S., amending the City's Planning Code to update Chapter 17.107 Density Bonus and Incentive Procedure. The purpose of the changes was: (1) to comply with new statutory requirements at the time; and (2) to fulfill the requirement of the City's 2007 – 2014 Housing Element to update the Density Bonus

City Council
November 2, 2021

Ordinance before the current 2015 – 2023 Housing Element was adopted on December 9, 2014.

On January 1, 2021, Assembly Bill (AB) 2345 went into effect with several changes to the State Density Bonus Law, including a number of density bonus standards and limitations. In addition, there have been several other changes to the State Density Bonus Law since 2014 when the City Council last updated Chapter 17.107. This code amendment seeks to align the City's Planning Code in compliance with State Law.

On June 16, 2021, the Planning Commission reviewed this proposal and recommended that the City Council adopt the amendments to the Planning Code to update Chapter 17.107 Density Bonus and Incentive Procedure.

ANALYSIS AND POLICY ALTERNATIVES

The proposed changes to Chapter 17.107 of the Oakland Planning Code will bring the City's existing Ordinance into compliance with State law by updating various aspects of the Ordinance with current information included in California Government Code Sections 65915 through 65918. The Planning & Building Department's (PBD) Bureau of Planning's practice is to follow State law, so all changes resulting from State law are implemented in the City of Oakland. The proposed code amendments support the City's Priorities of advancing **housing, economic, and cultural security** and a **responsive, trustworthy government** by:

- Providing greater certainty to project applicants about the City's implementation of the State Density Bonus Law, density bonuses, and incentives for affordable housing.
- Providing clarifying language that aligns the Ordinance with the City's existing density bonus application intake and regulatory agreement requirements, including clear timelines and a list of all required information.
- Offering an opportunity to streamline the production of affordable housing; and
- Ensuring affordability of both rental and homeownership units and preventing potential displacement of existing tenants.

Table 1 provides a summary of the state legislative changes to the State Density Bonus Law since 2014. Proposed amendments to address these changes, as further described below, will be incorporated into various sections of Chapter 17.107 of the Oakland Planning Code as shown in **Exhibit A** to the proposed revised Density Bonus Ordinance.

Table 1. Summary of Changes to State Density Bonus Law since 2014

State Laws	Summary
Assembly Bill (AB) 2222 (2014)	Created an affordable-unit replacement requirement to help address potential displacement of existing tenants.
AB 744 (2015)	Allows developers to request reduced parking ratios depending on the project's proximity to transit.

State Laws	Summary
AB 2442 (2016)	Expanded categories of specialized housing for foster youth, disabled veterans, or homeless persons that could qualify a development for a density bonus.
AB 2501 (2016)	Streamlined the density bonus process by requiring municipalities to provide applicants with a clear timeline and list of all information required to complete a density bonus application.
AB 2556 (2016)	Strengthened replacement unit requirements contained in AB 2222 (2014) and clarified the implementation of required replacement units in density bonus projects.
AB 2753 (2018)	Added requirements that the City notify developers of information required for a complete density bonus application, submittal completeness, and the level of density bonus and parking ratios that the development is eligible to receive.
Senate Bill (SB) 1227 (2018)	Added a bonus for eligible student housing developments.
AB 991(2019)	Included non-substantive changes in various provision of the density bonus law.
AB 1763 (2019)	Added extra bonuses for taller and denser 100 percent (100%) affordable projects.
AB 2345 (2020)	Increased the maximum density bonus from thirty-five percent (35%) to fifty percent (50%).

Therefore, the revised Density Bonus Ordinance includes updated thresholds for granting of density bonus, incentives or concessions, waivers, and parking ratio reductions when a developer agrees to construct a residential housing development with one of the following categories:

1. Ten percent (10%) of the total base dwelling units of a residential housing development are made available as affordable housing for low-income households; or
2. Five percent (5%) of the total base dwelling units of a residential housing development are made available as affordable housing for very low-income households; or
3. A senior citizen housing development; or

4. Ten percent (10%) of the total base dwelling units of a residential housing development are sold at affordable housing cost to persons and families of a low or moderate income, provided that all units in the development are offered to the public for purchase and not as rental units; or
5. Ten percent (10%) of the total base dwelling units of a residential housing development are made available as affordable housing for transitional foster use, as defined in Section 66025.9 of the California Education Code, disabled veterans, as defined in Section 18541 of the California Government Code, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be provided at the same affordability level as very low-income units; or
6. Twenty percent (20%) of the total base dwelling units are made available as affordable housing for lower-income students in a student housing development that meets all of the requirements contained in subdivision (b)(1)(F) of California Government Code Section 65915; or
7. One hundred percent (100%) of all dwelling units, including total base dwelling units and density bonus units but exclusive of a manager's unit or units, of a residential housing development are made available as affordable housing for lower-income households, except that up to twenty percent (20%) of the dwelling units, including total based dwelling units and density bonus units may be made available for moderate-income households.

For developments meeting the above criteria, the revised Density Bonus Ordinance includes the specific amounts of increased density (over the density allowed in the applicable zoning district). For example, a developer dedicating 24 percent of units to lower-income residents is eligible for a 50 percent density bonus. The thresholds for the categories are set by State law, therefore the City of Oakland cannot adopt a density bonus ordinance that requires higher thresholds for affordable housing.

To comply with AB 2501 and AB 2753, which together require the City to articulate the procedures by which the City processes density bonus applications, the revised Density Bonus Ordinance includes revisions that describe the City's application process (Planning Code Section 17.107.030), the methodology for calculating the density bonus (Planning Code Section 17.107.040.J), and the quality and affordability requirements for the affordable units included in the proposed development (Planning Code Sections 17.107.105 through 17.107.114).

To implement the replacement unit requirements established by AB 2222 and AB 2556, the revised Density Bonus Ordinance includes the new Planning Code Section 17.107.045. Pursuant to this section, if a developer proposes a residential housing development on a property that includes currently or recently occupied rental dwelling units, the developer must include in the housing development an equivalent number of deed restricted affordable housing units and comply with the applicable requirements of Oakland Municipal Code Chapter 8.22, Residential Rent Adjustments and Evictions, including but not limited to relocation assistance.

Finally, the revised Density Bonus Ordinance also includes updates to the State law-permitted density incentives or concessions (simply referred to as incentives under the revised Density Bonus Ordinance), waivers or reductions of development standards, and reduced parking ratios. Incentives are granted in proportion to the number of affordable or age restricted units provided. Examples of incentives include reduction in development standards, such as required off-street

parking, required setbacks, maximum building height, and required open space, etc.

FISCAL IMPACT

Staff does not anticipate any direct fiscal impact from the proposal. Application of the revised Density Bonus Ordinance will be a routine component of project review administered by PBD. An updated ordinance will better position the City to incentivize the production of affordable housing.

PUBLIC OUTREACH / INTEREST

The proposed amendments were presented at a public meeting of the [Planning Commission on June 16, 2021](#) and there were no speakers on the item. The meeting was noticed in the *Oakland Tribune*.

COORDINATION

The Draft Density Bonus Ordinance was developed with the collaboration of the City Attorney's Office and PBD's Planning Bureau. This report and legislation were prepared in coordination with the Budget Bureau and City Attorney's Office.

SUSTAINABLE OPPORTUNITIES

Economic: There are economic opportunities associated with giving non-profit affordable housing developers and market rate developers a clearer path to providing affordable housing that can potentially save them time and money while resulting in more affordable housing production. Updating the density bonus regulations to be in conformance with State law will provide greater certainty for developers regarding the City's density bonuses for affordable housing as well as clarify how developers can maximize the number of affordable and market rate units that can be built on a particular site.

Environmental: There are environmental opportunities associated with this report; for example, reduced parking requirements depending on the project's proximity to transit will help reduce vehicle miles traveled and encourage use of public transit.

Race & Equity: Updating the existing density bonus regulations to be in conformance with State law has several racial equity opportunities. The updated regulations provide clear guidance for developers regarding the City's density bonuses for affordable housing and offer a chance to streamline the production of affordable housing as well as encourage development of more affordable housing units. The regulations ensure affordability of rental and homeownership units in an equitable and sustainable manner.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed density bonus amendments to the Planning Code rely on the previous set of applicable CEQA documents including the certified Environmental Impact Report for the 2007 – 2014 Housing Element (2010) and the CEQA Addendum prepared for the 2015 – 2023 Oakland Housing Element (2014) (the Previous CEQA Documents).

The proposed amendments to the Oakland Planning Code would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no “new information of substantial importance,” as defined in CEQA Guidelines Section 15162(a)(3).

In addition, the proposed amendments to the Oakland Planning Code are categorically exempt from environmental review pursuant to Section 15061(b)(3) (general rule, no significant effect on the environment) and 15183 (projects consistent with General Plan and Zoning) of the CEQA Guidelines since there would be no possibility of a significant effect on the environment. The Planning Code amendments being considered specify how the City will comply with and implement State density bonus law, and adoption is required pursuant to Government Code Section 65915(a). The bonuses, incentives, and waivers permitted by the ordinance are required by State law and the State law effective January 1, 2021, and this ordinance does not permit any bonuses, incentives, or waivers greater than those allowed by State Law.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance, As Recommended By The Planning Commission, Amending The Oakland Planning Code To Update Chapter 17.107, Density Bonus And Incentive Procedure.

For questions regarding this report, please contact Lakshmi Rajagopalan, Planner III at 510-238-6751.

Respectfully submitted,



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