



CITY OF OAKLAND

AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: William A. Gilchrist
Director, Planning &
Building

SUBJECT: SUPPLEMENTAL - Density Bonus
Ordinance Update

DATE: February 24, 2022

City Administrator Approval

Date: Mar 3, 2022

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.

REASON FOR SUPPLEMENTAL REPORT

This supplemental report provides modifications to the proposal to amend the Oakland Planning Code to update Chapter 17.107 Density Bonus And Incentive Procedure. Specifically, the Community and Economic Development (CED) Committee at their Special November 30, 2021 meeting forwarded the staff proposal to the City Council and directed staff to work with the Office of the City Attorney to craft language consistent with additional recommendations discussed at the November 30, 2021 meeting, which included the following changes as mentioned in the [Meeting Minutes](#) of the Special CED meeting:

DENSITY BONUS Ordinance (proposed amendments) -17.107.045:

1. In Section 17.107.045(A), need to specify that 'any other form of rent or price control' explicitly includes California's anti-rent gouging protections under Civil Code 1947,12 and Oakland's Rent Adjustment Ordinance.
2. Same Square Footage for Demolished Units - All replacement units to replacement demolished units must include the same square footage as the demolished units. (This is an amendment to section 17.107.045(C)(4), to ensure that a developer does not demolish a large affordable unit and replace it with a smaller one with the same number of bedrooms).
3. Presume that Demolished Affordable Units Had Low Income Households - The definition of protected units that developers must replace with affordable housing if they demolish them shall include units occupied by a low-income household in the past five years, where if the income of a household is not known, it shall be rebuttably presumed that a

City Council
November 2, 2021

- very low-income or extremely low-income household occupied the unit. (This is an amendment to section 17.107.045(C)(1) & (C)(2).)
4. Tenants Can Opt for Rent-Controlled Units to Replace Demolished Units – The affordable replacement units must be at 30% AMI as well unless the tenant opts to return to a rent-controlled replacement unit at the same rent as a demolished rent-controlled unit. (This is an amendment to section 17.107.045(C).)
 5. In Section 17.107.045(D), need to create a process for ensuring that tenants displaced due to demolition for the purpose of developing new housing have received relocation assistance under the Uniform Relocation Ordinance.
 6. Hold the moderate Oakland income rental projects to the same approval standards as moderate income for sales projects.
 7. Oakland should allow low-income units to qualify not only an income of 80%AMI but also a rent level of 80%AMI.

Other than the actions described above, the CED Committee recommended that the other elements of the proposal be considered by the full City Council.

Staff recommends adoption of the proposed Ordinance, provided in **Attachment A**, by the City Council with revisions reflecting the work by staff to incorporate the recommendations from the CED Committee to the extent permissible in compliance with the State Density Bonus requirements. In summary, the revised Ordinance includes proposed amendment numbers 1, 2, 5, and 6 and modifications to number 3 to conform to the State Density Bonus requirements and does not include proposed amendments numbers 4 and 7 because they would conflict with the State Density Bonus requirements.

BACKGROUND/LEGISLATIVE HISTORY

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 these changes was to comply with: (1) 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 Ordinance before the current 2015 – 2023 Housing Element that 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 of the City's Planning Code.

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.

On November 2, 2021, the City Council rescheduled this item to the November 30, 2021 Special CED Committee for further review.

On November 30, 2021, the CED Committee reviewed the proposed Planning Code amendments and voted to recommend the proposal to the City Council with additional recommended amendments to be drafted by staff.

On December 9, 2021, staff requested, and the Rules and Legislation Committee approved the item to be heard at the February 1, 2022, City Council meeting.

And on January 13, 2022, staff requested, to reschedule the item to the March 15, 2022, City Council meeting in order to coordinate with Oakland Housing and Community Development (HCD) department.

PROPOSED AMENDMENTS

Planning Code text amendments have been further revised to implement the direction of the CED Committee in its motion from the November 30, 2021 meeting. The CED Committee changes are shown in ~~double strikeout~~ for deletions and double underline for additions. The amendments numbers below coincide with the numbers above that were recommended by the CED Committee.

1. Section 17.107.045(A) to read as follows:

A developer shall be ineligible for a density bonus or any other incentives or waivers if the residential housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower low or very low income; subject to any other form of rent or price control, including but not limited to California anti-rent gouging protections (California Civil Code Section 1947.12) and the Oakland Rent Adjustment Ordinance (Oakland Municipal Code Sections 8.22.10 through 8.22.250); or occupied by lower low or very low-income households.

2. Section 17.107.045(C)(4) to read as follows to add total square footage to equivalent size and includes an exception for projects that involve demolitions of single-family homes, equivalent size requirements would entail at least the same total number of bedrooms and bathrooms but not the total square footage:

For purposes of this Section, "equivalent size" means that the replacement units contain at least the same total number of bedrooms, total number of bathrooms, and total square footage as the units being replaced. For purposes of replacing a unit in the form of a single-family home, "equivalent size" shall not require that the replacement unit include the same total square footage as the unit being replaced but still must contain at least the same total number of bedrooms and total number of bathrooms.

3. To implement proposed amendments to Sections 17.107.045(C)(1) & (C)(2), staff have included a new subsection Section 17.107.045(C)(5) to address income category requirements:

For purposes of this Section, the income category of the current or last household in occupancy shall be considered not known and the rebuttable presumptions above shall apply only when the developer includes as part of the density bonus application documentation, supported by a signed affidavit under penalty of perjury, of good faith efforts to determine the income category of that household. Documentation can include, but is not limited to, correspondence with the property management company, correspondence with the previous property owner, correspondence with existing tenants, or individual lease documentation and attachments. Documentation shall be redacted to protect tenant's personal identifiable information. If the developer does not provide any documentation evidencing that the income category of the current or last household in occupancy is not known or does not provide a signed affidavit, it shall be rebuttably presumed that very low-income renter households occupied the units.

4. Tenants Can opt for Rent-Controlled Units to Replace Demolished Units – The affordable replacement units must be at 30% AMI as well unless the tenant opts to return to a rent-controlled replacement unit at the same rent as a demolished rent-controlled unit. (This is an amendment to section 17.107.045(C).):
Revisions to amendment number 4 were not included as Planning Code amendments because they conflict with the State Density Bonus requirements.

5. Section 17.107.045(D) to read as follows:

For any dwelling unit described in Subsection A that the developer proposes to replace, the developer shall comply with all applicable requirements of Chapter 8.22, Residential Rent Adjustments and Evictions, including but not limited to relocation assistance. The developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the satisfaction of the Director of Planning documenting compliance with Chapter 8.22 and the lawful basis for the units becoming vacant, including but not limited to evidencing that the developer has provided any legally required relocation assistance to displaced tenants and a right of first refusal for a comparable unit available in the new housing development consistent with the Oakland Uniform Relocation Ordinance, Oakland Code Compliance Relocation Program, and California Government Code Section 66300.

6. Section 17.107.040(A)(4) to read as follows:

Category 4 - Ten percent (10%) of the total base dwelling units in a common interest development as defined in Section 1351 of the California Civil Code, for 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, except that a density bonus may also be granted for moderate-income rental units if and to the extent otherwise provided in the City of Oakland Affordable Housing Impact Fee Ordinance, Oakland Municipal Code Chapter 15.72;

7. Oakland should allow low-income units to qualify not only an income of 80% AMI but also a rent level of 80% AMI.

Revisions to amendment number 7 were not included as Planning Code amendments because they conflict with the State Density Bonus requirements.

PUBLIC OUTREACH / INTEREST

Staff met with interested members of the public on the replacement unit provisions as part of the proposed revisions and incorporated the recommendations to the extent permissible in compliance with the State Density Bonus requirements.

COORDINATION

The proposed revisions to the Draft Density Bonus Ordinance were developed in coordination with the Department of Housing and Community Development (HCD) and the City Attorney's Office.

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, And With The Revisions Recommended By The CED Committee 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 IV at 510-238-6751.

Respectfully submitted,



WILLIAM A. GILCHRIST
Director, Department of Planning & Building

Reviewed by:

Laura Kaminski, Strategic Planning Manager,
Bureau of Planning

Edward Manasse, Deputy Director/City Planner,
Bureau of Planning

Prepared by:
Lakshmi Rajagopalan, Planner IV
Strategic Planning, Bureau of Planning

Attachments (1):

A: Supplemental Exhibit A: Proposed Amendments to the Planning Code