



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: April 25, 2018

Approved

D. D. SyL

Date

4/26/18

SUPPLEMENTAL

SUBJECT: PP14-036: AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A NEW CHAPTER 20.190 TO TITLE 20 OF THE SAN JOSE MUNICIPAL CODE AND AMENDING SECTION 5.08.450 OF CHAPTER 5.08 OF THE SAN JOSE MUNICIPAL CODE TO IMPLEMENT CALIFORNIA GOVERNMENT CODE SECTIONS 65915 ET SEQ. (STATE HOUSING DENSITY BONUSES AND INCENTIVES LAW) AND PROVIDE AFFORDABLE HOUSING INCENTIVES CONSISTENT WITH THE SAN JOSE GENERAL PLAN

REASON FOR THE SUPPLEMENTAL

On March 20, 2018, Planning staff received a letter written by Dennis Martin on behalf of the Building Industry Association (BIA) regarding the proposed Density Bonus Ordinance. Staff did not have the opportunity to respond to the letter prior to Planning Commission. Staff's response to Mr. Martin's letter is provided below. Staff met with Mr. Martin and Ms. Sausedo on April 6, 2018 to discuss concerns raised in the letter.

ANALYSIS

Staff Report- Legislative History

Comment: The letter states the staff report should have included the actual findings and declarations that the legislature made when it adopted the Density Bonus state law.

Response: The purpose of the background section of the staff report is to provide a brief description and context of the subject matter. While an exhaustive recitation of the state legislative history is not required, the staff report does provide a summary of the law's basic intent to encourage affordable housing throughout California cities.

Draft Ordinance Section 20.190.010 Purpose

Comment: In his letter, Mr. Martin points to section 20.190.010 of the Ordinance which states that the ordinance will facilitate affordable housing “consistent with the goals, objectives, and policies of the City’s General Plan Housing Element.” Mr. Martin shares that the state density bonus law has its own legislative intent and policy purposes, and the legislation preempts any inconsistent local policies, goals or objectives. As such, Mr. Martin states that the Purpose section of the Ordinance should summarize the legislature’s purpose, not just San Jose’s intent.

Response: The referenced code section specifically states that the purpose of the new Chapter is to “specify how the City will comply with the state density bonus and incentives law.” Sections 20.190.030(A) and 20.190.060 state that the City will provide density bonuses and up to three incentives “if required by the State Density Bonus and Incentives law.” The General Plan language in Section 20.190.030 (B) does not undermine this commitment and is needed to support the provisions in the Chapter that are not required by State law.

Draft Ordinance Sections 20.190.050 Development Standards for Restricted Affordable Units

Comment: The BIA considers the “design standards” language in 20.190.050 to be inconsistent with the intent of the Density Bonus statute.

Response: While the State Density Bonus and Incentives Laws allows designs standards to be waived, cities still have the option of including design standards. Additionally, General Plan Policy H-3.1 requires that development of a housing stock incorporates the highest possible level of amenities, fit and finish, urban design and architecture quality. There should be no obvious distinction between the affordable units and the market-rate units when it comes to design. This section of the Ordinance ensures that the City’s design standards will be implemented in an equitable way. Finally, the Ordinance incorporates the waiver process in Section 20.190.090(c)(3) if the developer is unable to comply with any of the design standards.

Draft Ordinance Section 20.190.060 City Density Development Incentives.

Comment: The BIA objects to the “menu” of incentives and concessions asserting they hinder development rather than incentivize it. Specifically, the letter states that the City’s ordinance limits the type of incentives for which a developer can ask.

Response: Staff proposed incentives related to setbacks and parking, as they are the two most common incentives requested by affordable housing projects to date. Identifying exactly how a developer can obtain these incentives makes the density bonus process easier for the developer by identifying the path to a setback reduction. However, if a developer requested a different incentive than the ones identified in the Ordinance, Section 20.190.060(D) outlines the process to be able to do so.

Burden of Proof Provisions is Inconsistent with the Density Bonus Law

Comment: The BIA letter states that the draft Ordinance requires the applicant to bear the burden of “proving” that a waiver or modification of a development standard will physically preclude the project.

Response: Section 20.190.090(C)(3) of the draft Ordinance states that the Approval Authority may deny an application for a waiver or modification of a Development Standard based only on *substantial evidence*. The City must prove that the denial of the Development Standard will not physically preclude the construction of the development at the densities or with the incentives permitted by state law. This section contains the precise language Mr. Martin wants to see, that the burden of proof is on the City, not the developer to prove that a development standard does not preclude the project.

20.190.080 Application Requirements and Timing

Comment: The BIA contends that there are several provisions of the application and timing process that are invalid, as they codify heightened information and analysis to receive an incentive. Also, BIA states that the provisions purport to require the applicant to submit evidence regarding modification of development standards.

Response: The draft ordinance does not require developers to prove or demonstrate anything to receive an incentive. Section 20.190.080(B)(3) requires developers to provide “reasonable documentation that each requested incentive will result in identifiable and actual cost reductions to provide restricted affordable units.” This language directly mirrors State law. Specifically, Section 65915(a)(2) of the state law states that a local government is not prohibited from requiring an applicant to provide reasonable documentation as to why the incentive should be granted, not establish eligibility for a requested density bonus, incentive or concessions, or waivers or reduction of development standards.

Provide that City Mandated Inclusionary Units must be Counted.

Comment: The BIA letter urges the inclusion of a provision requiring that the units provided, pursuant to the City’s Inclusionary Housing Ordinance, be counted as affordable units for purposes of determining whether a project meets the affordability thresholds for triggering the minimum density bonus and other provisions of state law.

Response: This request is already allowed by the San Jose Municipal Code Sections 5.08.450(a). However, staff will be using this opportunity to amend section 5.08.450 to further clarify that density bonus and incentive requests for inclusion units are to be processed under new Title 20.

HONORABLE MAYOR AND CITY COUNCIL

April 25, 2018

Subject: Ordinance adding Chapter 20.190 to Title 20 of the San Jose Municipal Code

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CONCLUSION

In light of staff's response to the submitted letter, staff recommends that the City Council adopt the ordinance adding a new Chapter 20.190 to Title 20 of the San Jose Municipal Code and amending section 5.08.450 of Chapter 5.08 of the San Jose Municipal Code to implement California Government Code Sections 65915 et seq. (State Housing Density Bonuses and Incentives Law) and provide affordable housing incentives consistent with the San Jose General Plan.

/s/

ROSALYNN HUGHEY, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Planning Official Steve McHarris at (408) 535-7819.