



City Council Staff Report

From: City Manager

Report Type: CONSENT CALENDAR

Lead Department: Planning and Development Services

Meeting Date: May 6, 2024

Report #:2404-2874

TITLE

LEGISLATIVE: Adoption of an Ordinance Updating Chapter 18.15 (Density Bonus) of Title 18 (Zoning) to Reflect Recent Changes in State Density Bonus Law and Revising Regulations for Provision of On-Site Affordable Rental Units Under the City's Inclusionary Housing Ordinance; Recommended by the Planning and Transportation Commission March 13, 2024. CEQA Status: Exempt under CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION

Staff recommends the City Council adopt the attached ordinance (Attachment A) updating Palo Alto's Density Bonus regulations in accordance with recent changes in state law and revising regulations regarding the provision of on-site affordable rental units.

BACKGROUND

Chapter 18.15 of the Palo Alto Municipal Code outlines the City's Residential Density Bonus program. This Chapter was enacted to comply with the state density bonus law, California Government Code Section 65915. California's density bonus law requires local governments to provide housing developers with density bonuses and other concessions or incentives when the developers agree to provide a certain percentage of affordable housing. This state law requires compliance by local governments, even in the absence of local ordinances providing state mandated bonuses, concessions, or incentives. A local ordinance, however, can provide clarity to developers and the public regarding the interaction of state density bonus law with other aspects of local zoning regulations.

Palo Alto first adopted its Density Bonus ordinance (PAMC Chapter 18.15) in 2014. Since that time, the City has periodically updated the code in response to changes in state law, most recently in 2021. Since that time, a variety of bills have made minor changes to state law, including SB 728 (2021), and AB 2334 (2022). More recently, AB 323 (2023) made a major revision, adding an "additional" density bonus that allows a developer to achieve up to a 100% density bonus over the base provided in Title 18 or the Comprehensive Plan.

In 2017, the City also recodified and updated its inclusionary housing ordinance in PAMC

Chapter 16.65. In accordance with that effort, the City Council also set housing impact fees, housing in-lieu fees, and defined the on-site affordability alternative for rental housing projects (Ordinance No. 5409). Although the on-site affordability option has not been used in years past, as rental housing developers could simply pay an impact fee, it is likely to become more relevant as developers seek to utilize state density bonus law, which requires provision of on-site affordable units.

Planning and Transportation Commission Review

On March 13, 2024, the Planning and Transportation Commission recommended, on a 7-0 vote, that the City Council adopt the proposed ordinance with minor edits, including: (1) Delete the menu of concessions, (2) Include the clarification or change to affordable housing requirement that it be low income in Section 3 of the ordinance, and (3) correction of typos and clarification of non-substantive issues. Links to the staff report and video are provided below.¹ Commission correspondence is published on the PTC webpage.² There was one public speaker to the item, who mentioned a specific pending project which was not on the agenda.

This item implements Program 3.8 of the City's adopted 2023-2031 Housing Element, which directs staff to ensure that the zoning code remains consistent with state law. As an action implementing prior Council direction, adoption of this ordinance has been placed on the consent calendar.

ANALYSIS

Regardless of whether the City acts to amend its ordinances, the changes to state law will dictate the City's actions when reviewing a state density bonus project. The state law is written to supersede any conflicting local ordinances. Amending the City's Zoning Code will provide clarity to the public about the current laws applicable in the City. The following are changes made to Chapter 18.15, Density Bonus:

1. Applicability. These amendments clarify that projects in a Planned Community Zone or subject to a development agreement are not eligible for density bonus and that the use of state density bonus law might render a project ineligible for local incentives like the Housing Incentive Program (HIP) or the recently adopted El Camino Focus Area standards.

¹ Link to PTC report: <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2024/ptc-3.13-density-bonus.pdf>

Link to video of March 13, 2024 PTC meeting: <https://midpenmedia.org/planning-and-transportation-commission-2-3132024/>

² Link to staff correspondence with PTC members: <https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/agendas-minutes/planning-and-transportation-commission/2024/ptc-3.13-commission-communications.pdf>

2. Definitions. These amendments are primarily to include new and amended definitions in state law. Most notable among these is the updated definition of “base density” or “maximum allowable residential density,” which now provides explicit direction on how to apply density bonus to zones that do not provide a maximum number of dwelling units per acre. In the past, Palo Alto had very few areas that did not regulate maximum du/acre, but rezonings under the 2023-2031 Housing Element have increased the number of sites where this may apply.

In addition, following the PTC review, staff’s attention was drawn to an outdated requirement in the City’s ordinance with respect to qualifying development. The existing definition of “development” requires that a project provide five or more “additional” or net-new units. The current requirement in state law is simply that a project include “five or more residential units.” A net increase in units is only expressly required when the project is the substantial rehabilitation of an existing multifamily dwelling. Accordingly, the proposed ordinance removes the requirement for project to provide additional units, except in the limited circumstance specified in state law.

3. Size of bonus and number of concessions. The ordinance includes minor adjustments regarding the amount of density bonus and number of concessions granted in certain situations, in accordance with changes in state law.

4. Additional density bonus. The ordinance adds provisions regarding the “additional density bonus” authorized by AB 323.

5. Updated provision on incentives and concessions. Updated regulations on the use of incentives and concessions and, in accordance with the PTC recommendation, deleted the pre-approved “menu” of incentives and concessions. This menu was not used by developers. Recent caselaw on density bonus has also led developers to utilize incentives, concessions, and waiver much more aggressively, such that they are unlikely to consult a menu of pre-approved options.

In addition to updates to Chapter 18.15, the ordinance also amends the City’s on-site alternative for rental housing projects. These requirements are not codified. Potentially as a result of error, the regulations adopted by the Council in 2017 are too permissive, as they allow a rental housing developer to provide 15% of units at rates affordable to moderate income households. Recent experience has shown that this level of affordability can be fairly close to market rate in some situations. Staff proposes to revise this requirement to be 15% of units at rates affordable to lower income households, which is more typical. This update also includes an option for developers to provide units affordable to very low income households, drawing from the ratios used in state density bonus law. Following the PTC review, staff updated the proposed requirement for very low income units from 8% to 9%, which also aligns with both state density bonus law and Council’s direction in the Planned Home Zoning (PHZ) program.

FISCAL/RESOURCE IMPACT

There is no fiscal impact associated with this action.

STAKEHOLDER ENGAGEMENT

The Planning and Transportation Commission meeting was the opportunity for the public to comment on the proposed ordinance.

ENVIRONMENTAL REVIEW

The adoption of this ordinance is not a project subject to the California Environmental Quality Act, under CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that adoption of the ordinance will not have a significant impact on the environment.

ATTACHMENTS

Attachment A: Draft Ordinance Amending PAMC Chapter 18.15 and Updating Rental Alternative Regulations

APPROVED BY:

Jonathan Lait, Planning and Development Services Director