



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 8 - 0 0 0 9
JAN 1 5 2008

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTIONS 12.22, 12.24, 14.00 AND 19.01
OF THE LOS ANGELES MUNICIPAL CODE TO IMPLEMENT A DENSITY
BONUS PROGRAM, AS REQUIRED BY STATE LAW**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 05-1345

Honorable Members:

We are transmitting to you for your action, approved as to form and legality, a final draft ordinance. This draft ordinance amends the provisions of the Los Angeles Municipal Code so as to implement the state density bonus law.

Charter Findings

Pursuant to Charter Section 559, the Director of Planning has disapproved the draft ordinance on behalf of the City Planning Commission and recommended that the City Council not adopt it. Should the City Council adopt this ordinance, it may comply with the provisions of Charter Section 558 by either adopting the findings of the Director of Planning as set forth in her report dated January 14, 2008, or by making its own findings.

CEQA Findings

Regarding a finding pursuant to the California Environmental Quality Act (CEQA) and as set forth in a letter from the Director of Planning to the City Attorney's Office dated January 2, 2008, the Director of Planning recommends that the City Council

JAN 1 6 2008

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adopt a General Exemption for this project, Notice of Exemption No. ENV-2008-87-CE, pursuant to State CEQA Guidelines Section 15061(b)(3) and City CEQA Guidelines Art. II, Sec. 1, because it can be seen with certainty that codifying the procedures for implementing the state density bonus law will not have a significant effect on the environment.

Background

On April 4, 2006, your Planning and Land Use Management Committee (PLUM) approved the ordinance and recommended that it be adopted by the City Council with several modifications to the Commission's June 9, 2005, action.

On August 1, 2006, the Housing, Community, and Economic Development Committee (HCED) concurred with the PLUM action of April 4, 2006, and requested that the City Attorney draft an ordinance consistent with the amendments approved by PLUM.

The City Attorney did so and presented the draft ordinance to PLUM and HCED, meeting jointly, on November 6, 2007. The joint committee directed the City Attorney to draft an ordinance consistent with additional amendments approved by the joint committee and present that draft ordinance to the City Council. This final draft ordinance incorporates the changes recommended by the joint committee.

Summary of Ordinance Provisions

This ordinance makes changes to the existing density bonus provisions in the Code so as to implement the changes to the state density bonus law (SB 1818), which requires cities to permit increased density for market rate housing projects that include a percentage of the units "set aside" as affordable to a certain income group.

In January 2005, SB 1818 took effect. SB 1818 amended Government Code Section 65915 and significantly changed the State's existing density bonus program by lowering the number of affordable units that are required to be set aside in order to qualify for a density bonus. Projects may now qualify for a base density bonus of 20% (rather than the previous 25%), and the bonus may be increased to a maximum of 35% if additional affordable units are included.

The new law also requires cities to grant up to three "incentives" requested by an applicant, depending upon the percentage of affordable units and the target income group. An incentive is defined in the law as a deviation from any zoning or development regulation. The City must grant the incentive unless it can make one of the following findings: 1) the incentive is not required in order to provide for affordable housing costs or rents; 2) the incentive has a specific adverse impact upon health, safety or the

physical environment; 3) the incentive has an adverse impact on any real property that is listed in the California Register of Historical Resources.

The draft ordinance specifies a "Menu of Incentives" that includes deviations from the Zoning Code typically requested by housing developers. Applicants can also request incentives that are "off the Menu" but the process and notice requirements are more extensive for these requests. The intent is to implement the law in a way that balances the need for affordable housing with the integrity of local planning and zoning in maintaining livable neighborhoods.

The joint committee added language to Paragraph (g)(2)(i) c (ii) which would enlarge the City's ability to deny an incentive or concession to include a specific adverse impact on real property listed ". . . in the City of Los Angeles list of Historical-Cultural Monuments, or is a contributing structure in a designated Historic Preservation Overlay Zone" The state density bonus law allows cities to deny an incentive or concession only on the basis of an impact on real property ". . . listed in the California Register of Historical Resources" Thus, enlarging a city's ability to deny an incentive or concession to include impacts on historical or cultural resources recognized only by that city, but not the state, would appear to violate the state law.

In our opinion, it would not violate the state law to so enlarge the City's ability to deny an "on Menu" incentive or concession. The reason is that the state law does not require cities to offer on Menu incentives/concessions and thus it would not violate state law for a city to qualify such incentives/concessions. Also, even if a developer is denied an on Menu item, the developer still has the right to request the incentive or concession through the "off Menu" process. Therefore, we have modified the proposed language to apply to only on Menu incentives/concessions.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Departments of Housing and Building and Safety. The draft ordinance incorporates those changes that are acceptable to all the departments.

Fee Notice Requirement


The attached final draft ordinance contains fees. Prior to adopting a new fee or increasing an existing fee, the City Council must conduct a public hearing concerning the matter, as required by Government Code Section 66018. Notice of the time and place of the meeting at which the hearing will be held, including a general description of the matter to be considered, must be published in accordance with Government Code Section 66016 and 6062a. After conducting the hearing, the City Council should determine whether the amounts of the fees contained in the ordinance are appropriate.

The City Council may impose these fees so long as the fees do not exceed the expected cost of implementing this City program.

If you have any questions, please feel free to contact Deputy City Attorney Kenneth Fong at 213.978.8064. He or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 
CLAUDIA CULLING *by ssc*
Special Counsel – Municipal

CC/KTF:zra
Transmittal

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**City Attorney
Land Use/Real Property
Received**

JAN 14 2008

January 2, 2008

The Honorable Rockard J. Delgadillo
City Attorney
Room 800, City Hall East
200 North Main Street
Los Angeles, CA 90012

ATTN: Kenneth Fong, Deputy City Attorney

Dear Mr. Fong:

I am writing to provide you with information, pursuant to the California Environmental Quality Act (CEQA), regarding the environmental impact of the proposed implementing ordinance for the State density bonus law, SB 1818, that you are drafting. Amongst its major provisions, the amended State law requires cities to grant density bonuses and up to three incentives (defined as deviations from the Zoning Code) when a requisite amount of affordable housing is included as part of a housing project. The law requires that "all cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented."

The ordinance you are drafting is that ordinance required by SB 1818 in Govt. Code Section 65915, which became effective on January 1, 2005. Prior to this most recent amendment, the State density bonus law had been in effect since 1980 (with several intervening modifications), and the City has had an implementing ordinance for the State density bonus law since December 30, 1995. The City subsequently amended its implementing ordinance, effective January 15, 2003, to implement State law and other changes.

The proposed ordinance amends the previously adopted density bonus implementing ordinances (Ordinance Numbers 170,764 and 174,995) so that the City's procedures are in compliance with the amended State law. While the previous State law and City ordinances also permitted "incentives" in conjunction with density bonus projects, the amended law requires a specified percentage of affordable housing units that must be provided in order to receive incentives, and includes a maximum of three incentives. The proposed ordinance establishes new procedures for the filing and consideration of applications for density bonus requests, including procedures for considering requests for "incentives," as established in the amended State law. The implementing ordinance creates two sets of "incentives" (on menu and off menu) and filing procedures for each.

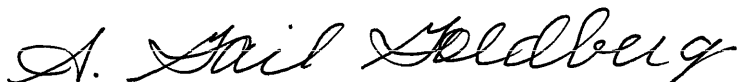
The implementing ordinance will not have a significant impact on the environment because it merely establishes the procedures for filing and reviewing requests for such projects. These projects must be reviewed and considered pursuant to the State law, regardless of how the City opts to implement the various provisions. As such, the substantive application of SB 1818 is already provided for in the State law and is already in effect.

Also, when measured against the baseline before SB 1818 went into effect in 2005, the City's implementing ordinance would not have a significant effect. Since the law went into effect on January 1, 2005, through October, 2007, 56 projects have used the density bonus provisions (i.e., executed covenants for the required affordable units) which represents only 2% of all multi-family residential projects for which permits have been issued in the City. Furthermore, these density bonus projects are dispersed throughout the 464 square miles of the City, and have not been concentrated in any one part of the City (see map attached).

Additionally, the implementing ordinance requires that each project requesting a density bonus along with an incentive (except those projects in which the only deviation from the City's zoning regulations is compliance with the parking space requirements contained in the State law itself) will be subject to CEQA and reviewed on a case-by-case basis to determine whether or not the project has any impacts on the environment in which the project is located. Until projects are filed on a specific site, it would be too speculative to determine which 2% of the city's multi-family residential or commercially zoned parcels might utilize the density bonus provisions and whether or not any environmental impacts would be created, based on the previously-cited dispersal of projects using SB 1818 since the law went into effect.

SB 1818 has been in effect since January 1, 2005. As required by this law, the City has been accepting, reviewing, and making determinations regarding density bonus applications pursuant to the provisions of the State law since that date. Based on three years of experience, it can be seen with certainty that codifying procedures to implement the existing State law will not have a significant effect on the environment.

Sincerely,

A handwritten signature in cursive script that reads "S. Gail Goldberg".

S. GAIL GOLDBERG, AICP
Director of Planning

