November 4, 2019

TO: City Council
FROM: City Attorney’s Office
SUBJECT: PRESENTATION ON DENSITY BONUS LAWS/HOUSING ACCOUNTABILITY ACT AND RELATED MATTERS

STAFF RECOMMENDATION

It is recommended that the City Council receive a presentation on the Density Bonus Law, the Housing Accountability Act, and related matters.

BACKGROUND

The attached PowerPoint presentation addresses the above laws concerning housing, as well as recent developments in the area which will apply to a number of development projects in the future.

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City Attorney

Prepared by: City Attorney’s Office
Housing Accountability Act (HAA) and Density Bonus Law

For the Simi Valley City Council

November 4, 2019

by Lonnie J. Eldridge, City Attorney
What is the Housing Accountability Act?

(Gov’t Code § 65589.5)

- Originally adopted in 1982, amended more than 15 times since
- Applies to both affordable housing and non-affordable housing – difficult lesson for many agencies
- Act declares that “California has a housing supply and affordability crisis of historic proportions.”
- Broad Interpretation: “It is the policy of this state that this section should be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.”

Goal: Remove Barriers to Building Housing
HAA Overview

• HAA applies to all housing, both affordable and market-rate
• For affordable housing, a denial must meet strict terms of the HAA
• For market-rate, findings still are difficult
• Strict timelines must be met, or project is “deemed compliant”
HAA: Affordable Projects

- An “affordable project” (very-low, low or moderate income) must be approved unless it meets one of five strict criteria.

- Five criteria to deny: (1) City has met all RHNA for affordable housing (as built), and project does not meet City standards; (2) a specific adverse health or safety impact exists; (3) denial is required by law (very rare); (4) land is zoned for agriculture or resource preservation; or

- (5) The project is inconsistent with both the general plan and the zoning on the date application “deemed complete” AND the General Plan did not identify the site as suitable for affordable housing. (See 65589.5 (d)(1)-(5)).
HAA: Market-Rate Projects

- A “market-rate” project (non-affordable) must be approved unless:
  - (A) the project does not comply with “applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete” (GC 65589.5(j)(1)); or
  - (B) The project would have a “specific, adverse impact” upon the public health or safety.
Enforcement: What Are The Burdens under HAA?

- Public agency bears the burden of proof, by preponderance of evidence.
- Agency must notify of non-compliance within 30 days of “deemed complete” (<150 units) or 60 days (>150 units).
- If no notice given, “the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision” in City law.
- Court can order approval, fines and attorneys’ fees.
HAA: Additional Practice Points / Road Map

• Even if adverse impact is found, City must find that it cannot be mitigated (j(1)(B))

• Reduction in density is equivalent to project denial

• City can condition project consistent with objective standards—this is not a denial

• Future City standards (General Plan, Zoning, etc.) should be “objective” if feasible

• All staff reports for housing projects should fully address HAA—discretion is limited
SB330 (Effective Jan. 1, 2020) adds further requirements to HAA

- Projects will vest in “existing standards” when a “preliminary application” is submitted
- City is precluded from conducting more than 5 hearings on a project
- Until Jan. 1, 2025, City is precluded from changing land use designations to less intensive uses (density and other factors) than those in effect on Jan. 1, 2018.
- City may not impose new design standards that are “non-objective” after Jan. 1, 2020
- City may not impose a development moratorium (unless there is an “imminent threat” to health and safety)

Advisory: Trends in existing and new bills are further reducing local control and discretion.
What is the Density Bonus Law?

(Gov’t Code § 65915)

- City must grant density bonus and incentives or concessions to a developer who constructs affordable or senior housing
- Granting of a density bonus does not require a general plan amendment or zoning change
- State density bonus law preempts local ordinances in conflict
- Parking standards are also reduced with project eligible for density bonus
- Also must waive “physically preclusive” standards

Provides incentives for developers who meet affordable or senior housing goals
## Calculation of the Density Bonus (Max. 35%)

<table>
<thead>
<tr>
<th>Affordable Type/Senior</th>
<th>Min % Units</th>
<th>Bonus</th>
<th>Additional Bonus per 1% Affordable</th>
<th>Max. 35% Bonus at Total % Affordable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very-low income</td>
<td>5%</td>
<td>20%</td>
<td>2.5%</td>
<td>11%</td>
</tr>
<tr>
<td>Lower-income</td>
<td>10%</td>
<td>20%</td>
<td>1.5%</td>
<td>20%</td>
</tr>
<tr>
<td>Moderate-income (ownership units)</td>
<td>10%</td>
<td>5%</td>
<td>1%</td>
<td>40%</td>
</tr>
<tr>
<td>Senior Housing (35 units +)</td>
<td>100%</td>
<td>20%</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

*Example: Project with 20% lower income units zoned for 100 units → up to 135 units w/bonus (35%)*
What is a Concession under the Density Bonus Law?

- A concession is a reduction in standards, modification of zoning code or architectural design requirements
- Concessions increase from one to three as the affordability % increases in a project
- City required to grant concession unless it finds that the concession does not result in “identifiable and actual cost reductions” or health and safety issue
- City bears burden of proof to deny
Examples of Concessions

- Setbacks
- Parking Requirements
- Square Footage Requirements
- Floor Area Ratios
- Mixed-Use Zoning
- Architectural Requirements

To date, no case has specifically limited what types of concessions can be requested.
What are Waivers?

*Waivers grant relief from development standards that “physically preclude” construction—they are unlimited*

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**Waiver Types**

- **Relaxed Height Waiver**
- **Setback waivers**
- **Reduced Landscaping**
- **Floor to Floor Height Waiver**

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- If waiver does not “physically preclude” construction, does not have to be granted

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--May decline waivers that would cause a health, safety or environmental issue
--Some items can either be requested as a concession, or as a waiver at developer’s option
The Density Bonus Law Also Affects Parking Requirements (see GC 65915(p))

- 1 parking space for studio/1 bedroom units
- 2 parking spaces for 2 and 3 bedroom units
- 2.5 parking spaces for 4+ bedroom units
- Certain lower ratios for projects w/in ½ mile of major transit stop (1/2-1/3 spaces per unit)
- Developer may request additional further parking reductions as a concession
AB1760 (Effective Jan. 1, 2020) makes further changes to Density Bonus Law

• Developer will be entitled to up to 4 concessions (instead of 3) for 100% affordable projects
• If project is located within ½ mile of a major transit stop, an additional three stories (33 feet) may be added
• Max. density bonus increased to 80% for 100% affordable projects for lower-income households (can also allow up to 20% of the units for moderate-income)
• Parking requirements waived entirely for 100% affordable projects that serve special needs population

Note: Fewer changes in Density Bonus Law than HAA in recent bills, but cities still must waive many standards.
Housing Accountability Act and Density Bonus Law Together—A More Difficult Planning Environment

**Conclusion: Challenges Ahead**

- Local codes must be written with “objective standards”
- Affordable projects can eliminate or reduce many City requirements
- Strict timelines, or projects are “deemed consistent”
- Future bills will likely be even more strict, especially re: affordable projects
- Cities can still condition projects and CEQA still applies
Questions?

THANK YOU