

From: [Clay Larson](#)
To: [David Arkin](#); [Leo Panian](#); [Phillip Moss](#); [Peter Maass](#); [Stacy Eisenmann](#)
Cc: [Jeff Bond](#); [Anne Hersch](#)
Subject: Comment on Item 6B on Tonight's P&Z Commission Agenda
Date: Tuesday, April 24, 2012 7:50:52 AM

Chair Arkin and fellow Commissioners;

I would like to comment on Item 6B, University Village Zoning Amendments, Planned Unit Development, Density Bonus Application..., on tonight's agenda.

Regarding the application for a density bonus, the staff report notes that the City has adopted density bonus regulations, "which give the City flexibility to modify land use requirements, including residential parking standards." Albany's zoning ordinance Section 20.40.040 F.1. provides that for a project that qualifies for a density bonus, the developer can apply for a reduction in parking requirements to the ratios mandated by Government Code Section 65915(p), which include a requirement of one on-site parking space for each studio or one bedroom unit. The zoning ordinance [Section 20.40.040 D.1.a.2)b)(9)] does include additional language, which describes further reductions in off-street parking ratios "below those that may be approved pursuant to Government Code Section 65915(p)." It is not clear that this latter provision of the ordinance is legal. Albany's general parking requirements for new construction (2 spaces per unit) were established by initiative petition (Measure D) in 1978. State law (California Elections Code Section 9217) provides in principal part that "No ordinance that is ... proposed by initiative petition and adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance." State Density Bonus establishes the maximum parking ratio requirements that can be imposed on a developer who requests a parking concession [Government Code Section 65915 (p)] and requires a City to adopt ordinances specifying how density bonus incentives and concession shall be applied [Government Code Section 65915 (a)]. The latter requirement should not be construed as authorizing the City to violate the provisions of State law regarding ordinances passed by a voter initiative. Thus, while it is true that State law generally takes precedence over local ordinances, the real impact here would be to lower the parking ratio minimums to one on-site parking space per unit (zero or one bedroom unit) as set by State law. Any additional reductions in parking would need to be authorized by the voters in an election contest. It does not appear that the Council is allowed to reduce the parking ratio to 0.6 as requested by the developer.

Clay Larson