

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Prepared Date: 10/10/05

Agenda Date: 10/17/05

Reviewed By: _____

SUBJECT: Public Hearing to Consider Proposed Zoning Ordinance Section 20.40: Housing Provisions, including related Definitions in Section 20.08. (Public Hearing)

FROM: Ann Chaney, Community Development Director
Ed Phillips, Zoning Consultant

PLANNING & ZONING COMMISSION RECOMMENDATION

That the City Council:

1. Adopt Resolution #05-48, adopting a Negative Declaration for a proposed Zoning Ordinance Amendment regarding housing provisions, Sections 20.40 and 20.08.
2. Introduce Ordinances #05-06 for First Reading of Zoning Ordinance Sections 20.40 and 20.08.

BACKGROUND

To assist the Council's review, staff has attached the following:

- Additional background materials, suggested by 9-19-05 work session (Attachment A)
- Zoning text as recommended by P&Z Commission (with modifications suggested by staff as a result of enactment of SB 435) (Attachment B)
- Decision Agenda (Attachment C)

Council Work Session, September 19, 2005: Council received a report from staff that reviewed the background on the development of the proposed zoning provisions for affordable housing, including the effects of Senate Bill 1818, which went into effect January 1, 2005. Staff described the relevant City policies as stated in the General Plan Housing element, and summarized the zoning text recommended by the Planning and Zoning Commission. Staff outlined the distinctions and similarities of the "inclusionary" and "density bonus" features of the proposed zoning provisions. In responding to Council Members' questions, staff was aided by Barbara Kautz, of Goldfarb and Lipman, who was serving as legal counsel in the absence of the City Attorney. The Council Members expressed particular concerns regarding the granting of concessions of development standards, as required by the State law on density bonuses. There was also interest in in-lieu fees and the relationship of State parking standards to Measure D.

Public comment at the work session included the following points:

- 1) Incentives for inclusionary housing should not be excluded from R-1 districts. Incentives could be used to encourage conversion of existing (though nonconforming) multi-family units to below market occupancy. (See discussion on this point below on page 4 of this report, under “Inclusionary Housing”.)
- 2) Concern about open space and green buildings, and a suggestion that the city partner with U.C. so that new Village housing would be enhanced.

In response to discussion and requests at the work session, Attachment A provides the text of SB 435, a sample draft of an affordable housing agreement (provided by Goldfarb and Lipman), and a listing of California cities with inclusionary housing requirements, showing which allow in-lieu fees and other alternatives to construction.

General Background on Housing Provisions, Section 20.40: On December 6, 2004 the City Council adopted Ordinance 04-09, completing a multi-year effort to revise the City’s zoning ordinance. At that time the Council deferred adoption of certain parts of the text that addressed “density bonus” and other matters relating to affordable housing. More time was required to allow analysis of the potential effects of Senate Bill 1818, which substantially changed the State law on density bonus. Deferred parts were:

- Proposed Section 20.40, Housing Provisions, which included provisions for density bonus, inclusionary housing requirements, and other housing related material.
- Portions of Section 20.08, Definitions, which defined terms pertinent to housing.

Subsequently, staff presented the Planning and Zoning Commission with revised versions of Sections 20.40 and 20.08 that responded to changes to State law made by SB 1818. The Commission held a public hearing on the proposals, extending over four meetings in April, May and June 2005. On June 14, 2005, the Commission adopted Resolution No. PZ 05-02, recommending Council adoption of Section 20.40 and additional definitions in Section 20.08. (Attachment B.)

Senate Bill 435:

This bill was passed by the Senate and the Assembly in August, and was signed into law by the Governor on October 4, 2005, amending Government Code Section 65915 (density bonus). (See Attachment A-1) The legislation affects two types of developments:

- 1) mobilehome parks are eligible for density bonuses if they are limited to senior citizen occupancy;
- 2) condominium, as formerly used in the legislation, has been broadened to include any “common interest development” in which all units are for sale and 10% are available to moderate income households. Regarding resale, the new legislation specifies an equity sharing agreement between the seller and the local government.

SB 435 now specifies that an applicant for a density bonus must elect a single target group as the basis for calculation of a density bonus (i.e., lower income, very low income, senior citizen, or moderate income.) Under the previous legislation it could be assumed that a mixture of groups could be used for qualification for a density bonus.

In addition, the manner in which the density bonus is calculated has been revised under SB 435 to a tabular form, but the results of the calculation do not differ from the previous legislation.

Staff has reviewed the zoning text recommended by the Planning and Zoning Commission, with respect to the passage of SB 435. Suggested changes for compliance have been indicated in the version of the draft attached to this report (Attachment B-1). In staff's opinion, these changes are relatively minor. Because the City does not permit the development of mobilehome parks, changes regarding this residential use are not applicable to Albany. Regarding common interest development, Albany's Zoning Ordinance treats this development in the same terms as condominiums. The restriction of density bonuses to a single category of occupant appears to be in the City's advantage. Therefore staff believes that it is not necessary for the Council to refer the changes shown in the current draft to be reviewed by the Planning and Zoning Commission.

DEPARTMENT COMMENTS

The City Attorney was consulted on specific issues during the course of revising the proposed housing provisions. He arranged for outside counsel, at Goldfarb and Lipman, to review the material with respect to SB 1818. The review was performed by Barbara Kautz, who is both an attorney and a long-time Bay Area planner. On recommendations of the outside counsel changes were made in the draft, prior to Planning and Zoning Commission review. The City Attorney's comments are noted, where appropriate, in a column of the attached Decision Agenda. Ms. Kautz also participated in the Council work session on September 19, 2005.

DISCUSSION

Decision Agenda: Staff has prepared a Decision Agenda, Attachment C, to aid the Council in its review and consideration of the proposed zoning revisions.

The Decision Agenda presents a brief summary of each subsection, and describes the content of the specific paragraphs of the more complex subsections. The Agenda chart displays the recommendations of the Zoning Code Revision Committee (ZCRC) and the Planning and Zoning Commission, as well as comments by the City Attorney and, in some cases, explanatory notes prepared by staff.

In addition to the housing provisions proposed in Section 20.40, the Decision Agenda includes definitions of housing-related terms, which were excluded from the zoning revisions adopted in December 2004. Thus, the draft definitions have been updated to include terms used in SB 1818 and SB 435.

Housing Provisions: Draft Zoning Section 20.40 is a new section that sets out procedures and programs relating to “affordable” housing for low and moderate-income households. The purpose of the section is to implement housing policies that the City is committed to through the Housing Element of the General Plan. The development of the section originally followed a model ordinance provided by the State Department of Housing and Community Development. However, through changes in state law, and several rounds of local review, the material has evolved substantially from what was recommended by ZCRC.

Section 20.40 describes two principle mechanisms for promoting affordable housing:

- “Inclusionary Housing” (Subsection 20.40.030) is not a program directly mandated by State law. However, it has become the method of choice of cities throughout the state, as a means of meeting State-mandated housing production goals for localities. Although it was established as a policy of the City of Albany in the 1992 Housing Element, the mechanism has never been put into effect through the Zoning Ordinance. Under the proposed zoning provisions, all projects of 5 or more dwelling units would be required to “include”, or make available, 15% of the units for very low and low-income households.

On page of the draft zoning text, item “E. Incentives” states that incentives would not be applicable in R-1 zones. The Commission added that to help avoid intrusion upon single-family neighborhoods. However, there are numerous multi-family buildings within the R-1 area, particularly between Masonic and Stannage, which remain from pre-1978 re-zoning. They are relatively old, and it was suggested in the September 19, 2005 Council work session that rehabilitation that might accompany dedication of some units to lower income occupancy could be beneficial. Staff believes some incentives could be allowed so long as they did not affect the legal non-conforming status of the buildings; for example, incentives that did not increase density, reduce yards or open space or eliminate parking spaces.

- “Density Bonus” (Subsection 20.40.040) is a program that is specifically mandated by State law, including a requirement that local zoning ordinances must set forth the method by which the law will be implemented. In the simplest terms, if a developer agrees to construct a project in which as few as five percent of the units are to be affordable to lower income households, the City is required to grant an increase in maximum allowable density of 20 to 35 percent, plus at least one additional concession or incentive such as a waiver of a development standard or a fee.

CEQA documentation: Pursuant to requirements of the California Environmental Quality Act (CEQA), City staff prepared an Initial Study in April 2005 (Attachment D) to address potential environmental effects of density bonuses pursuant to Government Code Section 65915, as that section was amended in September 2004. (The Initial Study also covered a proposed General Plan Amendment and changes to draft Subsection 20.24.050, both of which pertained to floor area ratio bonuses; however such bonuses have been removed from discussion, as they were rejected by the City Council on November 1, 2004.)

The Initial Study represented an update of an earlier Initial Study, dated May 7, 2004, which had addressed the full scope of the proposed zoning revision and related General Plan amendments.

The conclusions of the 2005 study led to a determination by the Planning Manager, on April 6, 2005, that a Mitigated Negative Declaration should be prepared. A draft Mitigated Negative Declaration (Attachment E) was circulated on April 6, 2005 for a 30-day public comment period, which included a public hearing by the Planning and Zoning Commission on April 26, 2005. The public hearing was continued to May 10 and 31, and June 14, 2005. No written comments were received during the 30-day comment period, with the exception of a letter from East Bay Municipal Utility District (EBMUD) (Attachment D-1), which is described in the following paragraph. There was no public hearing testimony that directly addressed the proposed negative declaration. On June 14, 2005 the Planning and Zoning Commission adopted a resolution recommending City Council adoption of the proposed housing regulations, and made a finding that the Commission had reviewed and considered the information contained in the Initial Study dated April 6, 2005, as well as other evidence in the record of the review of the proposed regulations.

The EBMUD letter was received on April 26, 2005, but did not make its way to the Planning and Zoning Commission, and was not part of the information considered by the Commission. However, staff does not believe that the issues raised by EBMUD would have affected the Commission's recommendation to adopt the draft ordinance revisions. EBMUD's concerns, and staff responses (*in italics*) are as follows:

- 1) Water service: some developments may require main extensions; project sponsors should request a water service estimate from EBMUD. *The City routinely refers applicants to EBMUD.*

- 2) Wastewater: New development not previously anticipated could exceed the wet weather capacity of EBMUD's treatment plant. The City should assess projected peak wet weather wastewater flows and assure that capacity is available. *As part of the City's Infiltration/Inflow Correction Program, the City requires, in Chapter 15 of the Municipal Code, that all materials used in construction and repair of building sewers be watertight, and that this standard apply to all laterals in the case of property resale or any construction exceeding 5% of building value. These measures are intended to eliminate infiltration of storm water into the sanitary sewer system.*

- 3) Water recycling: The City is required to adopt a "dual plumbing ordinance" to allow for use of a non-potable supply of re-cycled water for non-domestic purposes, to be implemented as EBMUD recycling facilities come on line. The first such facility is now under construction. *City staff will work with EBMUD to determine what specific areas and types of development will be subject to dual plumbing requirements. Staff will develop regulations and procedures as necessary to implement State requirements for water recycling.*

- 4) Water conservation: Cities are required by State law to adopt an ordinance for water-efficient landscaping. EBMUD requests the opportunity to meet with City Staff to discuss appropriate programs and practices. *Relevancy is not limited to the scope of this zoning amendment. Staff will arrange such a meeting.*

Resolution #05-48 has been prepared for Council action to adopt a Negative Declaration on the housing regulations only. Since the FAR bonus material has been excluded from the project description, no mitigation measures are required. The EBMUD letter will be appended to the Initial Study, along with the staff responses stated above. In staff's opinion, the issues presented do not require specific mitigation measures to be included in the negative declaration.

FISCAL IMPACT

No significant fiscal impact is anticipated. No direct financial contributions toward development projects are required by the proposed ordinance provisions. However, some fiscal impacts could be associated with the following:

- Increased numbers of housing units and population, although, in the aggregate of developments, such increases would not be expected to exceed General Plan expectations.
- The City might receive some in-lieu payments from developers in connection with "inclusionary" requirements, to be restricted for use in affordable housing programs. These restrictions will be similar to restrictions that apply to the portion of the Reinvestment Agency's tax increment revenue that is set aside for low- and moderate-income housing assistance.
- Potential direct financial incentives for housing development, at City discretion, presumably using dedicated inclusionary in-lieu funds or tax increment set-aside funds.
- Potential waiver of application fees as incentives for housing development, at City discretion.
- Ongoing administrative costs in the form of City staff time or a contract with Alameda County to monitor affordability agreements.

ATTACHMENTS

- Council Resolution #05-48, to adopt Negative Declaration
- Ordinance #05-06, to adopt Section 20.40 and amendments to Section 20.08 (final text to be incorporated).
- **Attachment A** – Additional background material discussed or requested at 9-19-05 Work Session:
 - A-1: Text of SB 435 (vertical lines in margins indicate new or revised material)
 - A-2: Sample draft of an Affordable Housing Agreement (by Golfarb and Lipman)
 - A-3: Summary of Inclusionary Housing Survey (by Non-Profit Housing Association of California & California Coalition for Rural Housing)
- **Attachment B** - P&Z Commission Resolution No. PZ 05-02, dated June 14, 2004.
 - B-1: Attachment to Resolution - Recommended text of Sections 20.40 and 20.08, (with modifications suggested by staff as a result of enactment of SB 435)
- **Attachment C** - Decision Agenda
- **Attachment D** - Initial Study dated April 6, 2005.
- **Attachment E** - Draft Mitigated Negative Declaration, circulated April 6, 2005
 - E-1: Comment Letter from EBMUD, to be appended to Initial Study.