

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

Prepared Date: 9/9/05  
Agenda Date: 9/19/05  
Reviewed By: \_\_\_\_\_

**SUBJECT:** Work Session on Planning and Zoning Commission recommendation to adopt Zoning Ordinance Section 20.40: Housing Provisions, and related Definitions in Section 20.08.

**FROM:** Ann Chaney, Community Development Director  
Ed Phillips, Zoning Coordinator

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**RECOMMENDATION**

That the City Council:

1. Review and discuss the recommendation of the Planning and Zoning Commission, as presented in this report and attached materials.
2. Set a public hearing for October 17, 2005 to consider adoption of the recommended zoning ordinance amendments.

**BACKGROUND**

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

- Background on Affordable Housing (Attachment A)
- Zoning text as recommended by P&Z Commission (Attachment B)
- Decision Agenda (Attachment C)
- CEQA Initial Study (Attachment D)

**General Background on affordable housing:** Please see Attachment A, an informational memorandum that was originally prepared for the March 21, 2005 joint work session with the Planning and Zoning Commission. This memo provides background on State requirements for housing elements and density bonuses, and the status of the City's positions on these matters. Included in Attachment A is more detailed information on SB 1818, plus the text of the bill, and an illustrated example of a density bonus project.

**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.)

### **DEPARTMENT COMMENTS**

The City Attorney was consulted on specific issues during the course of revising the proposed housing provisions. He arranged for special legal counsel, at the Goldfarb and Lipman firm, 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 special legal counsel changes were made in the draft, prior to Planning and Zoning Commission review. Specific recommendations of the special legal council are included as notes on the attached Decision Agenda. The City Attorney has arranged for Ms. Kautz to be present at the September 19 City Council meeting, and to assist staff in informing the Council.

### **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 explanatory notes by the City Attorney and 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.

**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. ZCRC reviewed and recommended approval of an early version the section that was based on a model ordinance provided by the State Department of Housing and Community Development. However, as a result of

changes in State law, and several rounds of local review, the draft material now before the Council 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 five or more dwelling units would be required to “include”, or make available, 15% of the units for very low and low-income households.
- “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 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, and 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. Since the FAR (floor area ratio) bonus material has been excluded from the project description, no mitigation measures will be required for adoption with a 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 required to be 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**

- **Attachment A** - Background Memo prepared for the 3-21-05 Work Session, with supporting documents:
  - A-1: American Planning Association “ SB 1818 Q&A”
  - A-2: Text of Senate Bill 1818
  - A-3: Example of Density Bonus
- **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
- **Attachment C** - Decision Agenda
- **Attachment D** - Initial Study dated April 6, 2005.