

March 14, 2005

**MEMORANDUM**

TO: City Council  
Planning and Zoning Commission

FROM: Ann Chaney, Community Development Director  
Dave Dowswell, Planning Manager  
Ed Phillips, Staff Consultant

RE: **Joint Study Session on Planning and Zoning for Affordable Housing,  
March 21, 2005**

**PURPOSE:**

The purpose of this memorandum is to give the Council and the Commission some background on State requirements, and needed City responses, in the area of affordable housing. The report will discuss the following, inter-related, topics:

- The Housing Element of the General Plan
- The Draft Housing Section of the Zoning Ordinance
- New State law on Density Bonus (SB 1818)

(A chronology of dates related to these topics is presented at the end of this report.)

**HOUSING ELEMENT: REQUIREMENTS AND STATUS**

State requirements: State law requires that all local general plans include a housing element. Unlike most other elements of the general plan, the housing element is subject to state certification, by the Housing and Community Development Department (HCD). The lack of a certified housing element opens a City to potential litigation, which could result in suspension of such local functions as building permit issuance. Nominally, housing elements are required to be updated on 5-year cycles. However, regularity has been hampered by delays in the ability of regional agencies (in our case, ABAG) to produce the data for allocation of “fair share goals” for individual jurisdictions. Albany’s housing element was certified in 1985 and again in 1992, and the latest deadline for an update was December 2001.

City commitments: The City’s adoption of the 1991 housing element committed the City to carry out a number of polices and programs to encourage production of affordable

housing to meet its assigned fair share goal. Many of these steps involved zoning amendments:

- Inclusionary Housing provisions (require 15% of units in a development to be affordable.)
- Density Bonus procedures consistent with state law.
- Provisions for housing for disabled persons.
- Emergency and Transitional Housing provisions.
- Rezoning of portions of Kains Avenue and Adams Street.
- Encouragement of mixed-use development
- Encouragement of secondary residential units.

HCD review: The City submitted a draft revised housing element in June 2002 for HCD preliminary review. Extensive comments were provided by HCD in August 2002. Meanwhile the City was in the midst of the overall zoning update; the Zoning Code Review Committee (ZCRC) reviewed the proposed housing section of the ordinance in April 2002, and completed its recommendations to the Planning and Zoning Commission in December 2002. The City's answers to many of the HCD comments on the housing element were dependent on decisions to be made in the zoning revision process.

Status of draft element: Staff had completed revisions to the draft housing element by September 2003, in anticipation of adoption of the revised zoning ordinance in early 2004. At the current time, re-submittal of the draft awaits decisions on the housing section of the zoning ordinance. The City Council deferred adoption of that section on account of new State legislation which was enacted just before Council adoption of the balance of the revised ordinance.

In order to achieve re-certification of the housing element, the following steps will be necessary:

- Adoption of zoning amendments on housing, including density bonus procedure.
- Submittal of revised draft housing element for HCD review and comment.
- Planning and Zoning Commission hearings and recommendation on revised housing element.
- City Council hearings and adoption of revised housing element
- Submittal of revised housing element for HCD certification.

### **ZONING SECTION ON HOUSING:**

Zoning Section 20.40, Housing Provisions, was recommended by the Planning and Zoning Commission, on June 8, 2004, for Council adoption. The recommended section includes language to fulfill the housing element commitments on inclusionary housing, density bonus, disabled accessibility needs and emergency and transitional housing. (Other parts of the now-adopted zoning ordinance address mixed-use, secondary units, and re-zoning of commercial expansion areas for housing).

Deferred action: As noted above, Council deferred action on Section 20.40, on staff's recommendation. Senate Bill 1818 was signed by the Governor on September 1, 2004, to become effective January 1, 2005. That bill substantially altered the rules applying to density bonuses, and it was clear that the State action posed a need for careful re-evaluation of the City's proposed language on density bonuses and inclusionary housing, as well as the proposed incentives for floor-area ratio (FAR) bonuses. SB 1818 is discussed in detail in the next section of this memo.

Draft revisions: Staff has drafted a revised Section 20.40 to reflect the requirements of SB 1818. The new draft stays as closely as possible to text recommended by the Commission, except for major changes to the density bonus subsection to conform to State requirements. Changes to the inclusionary housing section are limited those items needed to distinguish certain features of that program from the requirements of the state-mandated density bonus program. Other subsections are essentially unchanged. The draft is not being distributed at this time, as staff is still considering what would be the best approach for approval of requests for density bonuses, in accord with the language of the State legislation.

In addition to the density bonus provisions, the revised draft includes a re-introduction of the proposed FAR bonus incentive system, with added language to assure that such bonuses are not compounded by the mandatory density bonus.

### **STATE LAW ON DENSITY BONUS:**

For about twenty years, the State laws on planning and zoning have required that local jurisdictions grant developers a "density bonus" in exchange for including specified percentages (varying from 10% to 20%) of the units in a development to housing for low income households and seniors. Density bonus refers to an increase in the number of housing units per acre, over and above what the locality allows in its general plan or zoning ordinance. Originally the maximum increase was 25%. In addition to the bonus, one "incentive" was required, generally in the form of a reduction of a particular development standard or equivalent financial assistance. The law was rarely applied and cities were slow to adopt implementing regulations in their zoning ordinances.

The situation has changed during the period of Albany's comprehensive zoning review and revision. First in 2002, and again in 2004, amendments have been made to the state law on density bonuses that represent a radical departure from the tradition of local management of land use. The recent amendments have lowered the threshold of qualification for a bonus, increased the maximum bonus available, increased the number and scope of mandatory incentives, and generally reduced the extent of local discretion in approving developments that include affordable units. In addressing the state-wide lack of affordable housing, the State is essentially saying that state laws on housing can now trump local standards on density, height, parking, set backs, and so forth. This represents

a big challenge for communities that are trying to plan sensible growth or growth management within their boundaries.

Under SB 1818, the qualifying standard for a density bonus is as low as 5% of the proposed units being affordable to very low-income households. With a higher proportion of affordable units the bonus can rise to a maximum of 35%, as opposed to the previous 25% maximum. Bonuses can now also be claimed for condominium projects that provide as little as 10% of their units for moderate-income households.

Perhaps even more threatening to local control is the broadening of incentives or concessions. Basically any standard that affects the design and construction of a development can be claimed by a developer as a concession. While the earlier legislation described incentives as being such items as setbacks and yard coverage, it now appears that an exemption from any standard, including height limits and FAR maximums, can be claimed if it reduces the costs of development of affordable units. The law states that the burden is on the City to demonstrate that there will be specific adverse impact on public health or safety or the physical environment. Otherwise incentives that are requested must be granted.

Two additional features of SB 1818 should be noted:

1. The donation of land suitable for affordable units can qualify for a density bonus, if the land meets certain criteria, including a minimum size of one acre. Due to the lack of vacant land in this city, this may have little significance to Albany.
2. If a project qualifies for a density bonus, the developer may request reduced parking standards, as specified in SB 1818;
  - 0-1 bedroom: 1 parking space
  - 2-3 bedrooms: 2 parking spaces
  - 4 + bedrooms: 2 ½ parking spaces.

The reduced standards would apply to the entire project, not just the affordable units.

These State standards for parking conflict with local Measure D, by which Albany voters set the minimum standard for all residential units at 2 parking spaces. In view of the State's inserting its authority into local planning, we can assume future enforcement of Measure D will be impossible, or at best problematical and costly. In light of this, the City Attorney believes that City Council should re-visit Measure D and consider proposing an amendment for voter consideration.

The American Planning Association (APA), California Chapter, has prepared a Question and Answer paper, which is attached to this memo. It provides more detailed discussion of the provisions and effects of SB 1818. Also attached for reference is the text of SB 1818.

As an additional attachment, staff has prepared an example of a development proposal for mixed use with an affordable housing component, and what might be the effects of a request for a density bonus and incentives.

## **CHRONOLOGY:**

The following chronology lists milestones, showing the interplay of Housing Element events with zoning revision events. (*Zoning references are in italics.*)

11/91: Draft of Housing Element submitted for HCD review.

12/92: Housing Element adopted and certified by State.

-----

12-01: State deadline for local adoption of updated Housing Elements.

4/02: *ZCRC review of draft Housing Section of revised Zoning Ordinance.*

6/02: Draft Revised Housing Element sent for pre-submittal review by HCD.

8/02: HCD comments received.

12/02: *ZCRC recommends draft Zoning Ordinance, including Housing Section.*

4/03: *P&Z reviews Housing Section.*

7/03: *Council reviews Housing Section, recommends changes.*

9/03: Staff makes revisions to draft Housing Element.

10/03: *First P&Z public hearing on revised Zoning Ordinance.*

10/03: Staff drafts City response to HCD comments (anticipating Zoning adoption early 04.)

6/04: *P&Z recommends revised Zoning Ordinance, including Housing Section.*

9/04: SB 1818 signed by Governor.

12/04: *Revised Zoning Ordinance adopted without Housing Section.*

## **ATTACHMENTS:**

- APA Report
- SB 1818
- Example of Density Bonus