

SUBJECT: ZONE TEXT AMENDMENT: AFFORDABLE HOUSING
DATE: OCTOBER 1, 2018
INITIATED BY: STATE MANDATED WITH CITY ADDITIONS
PREPARED BY: PLANNING & DEVELOPMENT SERVICES DEPARTMENT
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ISSUE STATEMENT

State laws regarding affordable housing requirements and density bonuses has been amended a number of times recently. The proposed zone text amendment will amend local affordable housing requirements to ensure compliance with updated state laws.

STATE LAW

Several new state laws and proposed revisions to the City's affordable housing requirements are presented and analyzed below (See Exhibit 3, Planning Commission Staff Report, Page 1, for a synopsis of the new state laws). Additionally, staff is proposing other amendments, which, while not required by state law, will help better implement the City's affordable housing and inclusionary housing provisions as well as add clarity to the City's current administrative practices.

PLANNING COMMISSION ACTION

On April 5, 2018, the Planning Commission held a public hearing regarding the proposed Affordable Housing Requirements ZTA, received comments from the public, and provided comments and direction to staff recommending various revisions to the proposed ZTA. The revisions to the draft Affordable Housing ZTA were considered by the Planning Commission at their July 19, 2018 meeting in which the Commission unanimously voted to recommend approval of the proposed ZTA to the City Council.

ANALYSIS

RECENTLY ADOPTED STATE AFFORDABLE HOUSING LAWS

This section of the memo presents the proposed revisions to Chapter 19.22 Affordable Housing Requirements and Incentives and Chapter 19.03, Interpretation of Zoning Ordinance Provisions. Each new bill is described and analyzed and revisions to the various sections in the Zoning Code are analyzed below. The attached draft ordinance (Exhibit 1) contains the exact proposed code amendment language.

Assembly Bill 2442 (Holden) – Transitional Foster Youth, Veterans, and Homeless Persons Units

AB 2442 allows a 20 percent density bonus for housing projects with at least 10 percent of total units reserved for transitional foster youth (transitional age youth),

disabled veterans, or homeless persons. As required by this state law amendments are proposed to Sections 19.22.010.A, 19.22.050.A, and 19.22.050.D.1, to include transitional foster youth housing as an allowable type of affordable housing for density bonuses and to add language stating that projects with 10% of this type of housing can be granted a 20 percent density bonus.

Assembly Bill 2501 (Bloom) – Affordable Housing Procedures; Rounding Up

AB 2501 requires local jurisdictions have proper procedures and timelines in place to facilitate expeditious processing of applications for multi-unit residential projects and commercial projects (partnered with affordable housing developers) that are requesting density bonuses. In conformance with this state law amendments are proposed to Sections 19.22.025, 19.22.050.D.3, and 19.22.050.D.1 to:

- Require density bonus applications to be processed at the same time as the land use application and by the review authority;
- Require that the developer submit all information about the requested density bonus, concessions and their justifications, and incentives at the time of application for the overall project; and
- Require that any density calculation, including base density and bonus density, that results in a fractional number, shall be rounded up to the next whole number.

Density Bonus Application Processing Improvements

Section 19.22.025 Processing Density Bonus Applications is proposed to be added to Chapter 19.22 to address various provisions of AB 2501. This section of the proposed ZTA requires an affordable housing developer to submit as part of their application package a narrative explanation of how requested concessions would result in identifiable and actual cost reductions for the project to offset the affordable housing costs. The purpose is to assist City staff, decision-makers and the public in better understanding all facets of the project early in the process, including the ways in which the project requires concessions or waivers from development standards. Additionally, having this information in the initial application will allow the City to comply with new provisions of the Housing Accountability Act that require the City to review a proposed project early on for compliance with local codes and plans. A more complete explanation of the Housing Accountability Act will come forward as a separate item to Council; nevertheless, having the developer explain the full scope of the project at the initial application phase will assist staff in the expeditious processing of the application.

Density Bonus Calculations – Rounding Up

AB 2501 requires that each component of any density bonus related calculation be rounded up. Any density calculation, including base density and bonus density that results in a fractional number shall be rounded up to the next whole number. Currently, 19.03.020.C requires all fractions to be rounded down when calculating the allowable number of residential units possible on a given site.

Mixed-Use Commercial/Residential Projects

AB 2501 also redefines a housing development to include mixed-use projects that include both housing and commercial uses. In response, revisions to Sections 19.22.020 and 19.22.050 are proposed to include provisions for providing affordable housing within mixed-use commercial/residential projects. Affordable housing projects in commercial areas need to meet the mixed use project density regulations; however, if a density bonus is applied for, the developer could be afforded certain floor area ratio (FAR), height, and/or setback concessions or waivers as part of a density bonus request, thereby resulting in an increase in housing units compared to a non-density bonus project. Section 19.22.025 of the ZTA clarifies how the density bonus is calculated for a mixed-use project. The Council has considered putting a residential density in the commercial zone; however, that proposal was rejected.

Assembly Bill 2556 (Nazarian) – Affordable Housing Replacement Guidance

In 2014, the Legislature passed AB 2222, to ensure that housing units occupied by very low and low income households were replaced when the state density bonus was used. Local jurisdictions had questions regarding how this bill should be implemented. Therefore, in 2016, the Legislature adopted AB 2556 providing further guidance for calculating the replacement requirement when some or all existing units on a site are either vacant and the developer does not know the income levels of the residents.

To ensure that residential projects with affordable units that are demolished to create new housing are replaced in accordance with state law Section 19.22.050.B.4, has been revised to include provisions for requiring the replacement of affordable units. In accordance with AB 2556 vacant units are either replaced in proportion to the number of known very low and low income households currently living in other units at the property, or replaced based on the number of lower income households estimated in West Hollywood using Federal Department of Housing and Urban Development (HUD) Comprehensive Housing Affordability Strategy (CHAS) data. AB 2556 also addresses the definition of “equivalent size” for replacement units, and requires that the replacement units must contain at least the same total number of bedrooms as the units being replaced.

While AB 2222 required replacement of units occupied by households earning very low and low income, AB 2556 also includes the ability for jurisdictions to require the replacement of any units previously existing in the five years prior to application for a planning permit that were rent stabilized and occupied by households earning higher than low income (moderate income and market-rate households) with affordable units (additional moderate income units in ownership projects, for example) or new rent stabilized units (in apartment projects).

Housing staff is studying this option and plans to return to the Planning Commission with a recommendation on how this could be implemented. The policy decision of type

of replacement requirement to implement could have far reaching implications in the local housing market. Separately from AB 2556, Title 17 (Rent Stabilization Ordinance) applies rent stabilization to any new rental housing projects constructed and offered for rent within five years of removing rent stabilized units from the housing market using the Ellis Act. This provision assures the Ellis Act is used to truly leave the rental market, and not as a means of avoiding rent stabilization by redeveloping the site. This provision however, could potentially encourage ownership development instead of new rental buildings as older rental properties reach the end of their useful life, or could create a holding period during which properties removed from the rental market remain vacant for five years prior to redevelopment.

Assembly Bill 1934 (Santiago) – Commercial Project Bonus

AB 1934 allows commercial developers to partner with affordable housing developers whereby both would be eligible to receive bonuses, concessions, and waivers for qualifying projects. In order to qualify for a development bonus, a commercial developer would need to partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households. Both projects would need to be in West Hollywood. One of the following incentives, which have been added to Section 19.22.050, would need to be mutually agreed upon by the applicant and review authority:

- Up to a 20-percent increase in maximum allowable intensity in the General Plan.
- Up to a 20-percent increase in maximum allowable floor area ratio.
- Up to a 20-percent increase in maximum height requirements.
- Up to a 20-percent reduction in minimum parking requirements.
- Use of a limited-use/application elevator for upper floor accessibility.
- An exception to a zoning ordinance or other land use regulation.

Assembly Bill 1505 (Bloom) – City’s Right to Require Onsite Inclusionary Housing

AB 1505 clarifies that jurisdictions have the right to require inclusionary onsite affordable housing in new multi-unit residential rental projects provided an alternative method of meeting the onsite requirement is provided (such as an in-lieu fee).

The City Council studied this option on January 16, 2018 and directed staffs to return with a code amendment to once again require new multi-family residential rental projects of 11 units or more to provide onsite housing. Therefore, in accordance with AB 1505, the proposed ZTA includes a revision to Section 19.22.040 that requires development projects of 11 or more residential units to provide affordable units onsite or under certain circumstances offsite within the City of West Hollywood. In addition, Section 19.22.040 Affordable Housing Fees continues to allow an in-lieu fee to be paid by developers of residential projects with 10 or fewer units, as an alternative method of meeting the affordable housing requirement. These requirements were in place in West Hollywood’s inclusionary program prior to 2014 when the Zoning Code was

amended to address the outcome of *Palmer Sixth Street Properties vs. City of Los Angeles*.

ADDITIONAL AFFORDABLE HOUSING ORDINANCE CLEAN-UP REVISIONS PER STATE LAW AND LOCAL ADMINISTRATIVE PROCEDURES

Additional “clean-up” revisions to Chapter 19.22, based on conformity with state law (Government Code Section 65915) and to clarify the City’s affordable housing procedures are proposed in the draft ordinance. The additional proposed amendments are described and analyzed below and are identified as state mandated or as a local discretionary amendment.

Density Bonus for Inclusion of Child Care Facilities - Per State Law

In accordance with California Government Code Section 65915, a residential or mixed-use commercial/residential development that includes a child care facility or donates land for a child care facility is eligible for a density bonus. In response, Section 19.22.020.A.3, is included in the ZTA, which allows a density bonus for housing projects with onsite child care facilities. Additionally, Section 19.22.050.D.2 allows a density bonus for a land donation for a child care center or construction of a child care center.

Accessory Dwelling Unit Exemption – Discretionary Local Amendment

Section 19.22.020.B.2, is a proposed revision to the affordable housing ordinance exempting accessory dwelling units (ADUs) from the City’s density bonus regulations. Existing single family homes and new developments can increase the total number of affordable units by integrating ADUs, which typically provide a source of affordable housing units.

Affordable Unit Size, Type, and Location – Discretionary Local Amendment

This proposed amendment to Section 19.22.030.F clarifies that when only one affordable unit is required, that unit can either be designated by the applicant as a very low or low income unit. Already required by the zoning code when two or more units are required, is that the units are distributed as follows: the applicant may choose to allocate the first unit as very low or low income, the second unit is allocated as moderate income, the third unit the applicant may choose to allocate for very low or low income, the fourth unit is allocated for moderate income, so on until all required affordable units are allocated a level of affordability.

Parking Reductions for Affordable Housing Projects - Per State Law

A text revision to Section 19.22.050.F is proposed to allow development projects qualifying for a density bonus by providing on-site affordable units relief from parking regulations. The reduced parking allowance of 0.5 parking spaces per bedroom would apply to a residential or mixed residential/commercial development that includes the

required (no in-lieu payment) percentage of low, very low income, or includes a minimum 10 percent transitional foster youth, veteran or homeless persons units, or provides for-rent housing for individuals who are 62 years of age or older, or is a special needs housing development.

Offsite Construction of Inclusionary Units – Discretionary Local Amendment

Section 19.22.070 allows developers of residential projects containing 11 or more units to provide required inclusionary housing units offsite, at one or more approved sites. The proposed revision specifies that a minimum of two (2) units shall be provided at the offsite location.

Payment of Density Bonus Fees – Discretionary Local Amendment

Currently, Section 19.22.080 requires that density bonus or other incentive agreements and in-lieu fees be executed or paid within 30 days of approval of a project with inclusionary units prior to the issuance of building permits. Proposed zone text revisions in Section 19.22.080 clarify current administrative practices by requiring a density bonus project applicant to enter into the “Agreement Imposing Restrictions on Real Property” prior to the City issuing a building permit. Amendments are proposed to clarify the City’s allocation of units first to lower income households (either very low or low) and then to moderate income households.

Administrative Practice – Rental, Sale and Re-Sale of Affordable Units - Per State Law

A proposed text revision to the Section 19.22.090 is proposed to more clearly state that the City’s existing and long standing requirement that any affordable unit provided to fulfill a requirement of the affordable housing provisions shall be permanently reserved for and occupied by qualified households meeting the affordable income requirement specified for the unit in the Resolution of Approval, Agreement Imposing Restrictions and Real Property, and all other eligibility requirements. Approval of this provision will bring the ordinance into conformance with state law as well as explaining current administrative practices.

Required Security Deposits and Pet Deposit - Per State Law

Proposed revisions to Section 19.22.090.A require security deposits for affordable housing units to be in conformance with state law. The following requirements are already provided in the restrictive agreements on inclusionary housing:

- A security deposit equal to the greater of one month’s rent or \$500 can be required.
- A pet deposit may be in addition to, but cannot exceed 25-percent of the security deposit.

Limitations on Purchasers and Sale Prices - Per State Law

Text amendments to Section 19.22.090.B require that the sale and resale of affordable units constructed with a state density bonus must be in accordance with state law. Revisions to this section also state that all purchasers of inclusionary units shall meet the income range targeted for a particular unit. To clarify this situation, Section 19.22.030.B.2.b regarding proof of income eligibility for a required level of affordability (very low, low, or moderate income) for purchase of affordable units is proposed to be moved to 19.22.090, Rental, Sale, and Re-sale of Inclusionary and Affordable Units.

Definitions of Specialized Terms and Phrases – Local Discretionary Amendment

The following proposed definitions were not previously included in the Municipal Code and have been added to assist developers, decision-makers, and the public in understanding terms and phrases used in the density bonus ordinance (See Exhibit 1, Page 17, for the complete definitions):

- *Affordable Housing Developer*
- *Clustering*
- *Density Bonus*
- *Density Bonus (Affordable) Housing Agreement*
- *Density Bonus Units*
- *Inclusionary Housing*
- *Major Transit Stop*
- *Special Needs Housing*

ALTERNATIVES

Provisions of the recently approved state laws currently apply to affordable housing projects in the City; however, several of the additional text revisions such as the addition of affordable housing terms and definitions are added to assist developers and the public. These additional text revisions could be removed from the proposed ZTA.

EXHIBITS

1. Ordinance No. 18-1044
2. Adopted Planning Commission Resolution 18-1242
3. Planning Commission Staff Report dated July 19, 2018
4. Planning Commission minutes from July 19, 2018
5. Planning Commission Staff Report dated April 5, 2018
6. Planning Commission minutes from April 5, 2018