



Office of the Mayor

ACTION CALENDAR

April 28, 2015

TO: Members of the City Council

FROM: Mayor Tom Bates and Councilmember Laurie Capitelli

SUBJECT: City Density Bonus

RECOMMENDATION:

Request that the City Manager draft an ordinance to implement a City density bonus that would serve as an option to the State density bonus. The City density bonus would mirror the State bonus by allowing housing projects (rental units and condominiums) of five or more units to receive a bonus of up to 35% increased density if the project contributes to the supply of affordable housing. For rental projects, the City bonus fee would be \$10,000 per unit, in addition to the City's affordable housing mitigation fee, which is currently \$20,000 per unit for rental projects. For condominium projects, the City bonus fee would be \$10,000 per unit in addition to any affordable housing mitigation fee that the City Council adopts for condominium projects.

Rental and condominium projects opting for the City density bonus would pay the \$10,000 new fee and the affordable housing mitigation fee on the project's base units, not the density bonus units. The City density bonus fee of \$10,000 could be changed by subsequent Council resolution.

Projects that already have building permits and are fully entitled for bonus density at the time this ordinance takes effect would be allowed to opt for the City density bonus by paying the fee when the Certificate of Occupancy is issued. After the ordinance is adopted, other future projects would pay the fee when the project's building permit is issued.

Request also that the City Manager review the City's Affordable Housing Mitigation Fee ordinance to insure compatibility with the City density bonus and amend if necessary.

Request also that the proposed ordinance and any amendment to the Affordable Housing Mitigation Fee ordinance be reviewed by the Housing Advisory and Planning commissions prior to presentation to the City Council for adoption.

BACKGROUND:

While the City density bonus would mirror the State density bonus' goal of increasing the affordable housing supply, the City bonus would differ in how the affordable housing is provided. The State law grants extra density if the affordable housing is included directly in the project. The City ordinance would grant extra density by allowing the project to pay an affordable housing in-lieu fee to the City's Housing Trust Fund, which would be used to provide affordable housing elsewhere.

The State density bonus (California Density Bonus Law) is implemented by California municipalities through local ordinances. Implementation of the law in Berkeley is defined in Section 23C.12.050 of the Berkeley Municipal Code, which specifies that housing projects of five units or more (apartments or condominiums) can be granted increased density plus potential concessions or incentives by meeting one of the three following requirements: 1) 20% of total units for lower income households; 2) 10% of total units for very low income households; or 3) 50% of total units as specially designed accessible housing for senior citizens.

Rental projects that use the State density bonus in Berkeley typically choose the second option of providing 10% of the units as affordable housing for very low income households, which are those whose income is no more than 50% of the area medium income (AMI). Developers choose this option because it can be used to satisfy the requirement of a different City ordinance -- the Affordable Housing Mitigation Fee ordinance (Section 22.20.065 of the Berkeley Municipal Code). This ordinance requires new multifamily rental projects to pay a per unit fee, currently set at \$20,000, to the City's Housing Trust Fund, which funds affordable housing projects in the City. However, the ordinance allows projects to be exempt from the fee if they provide 10% of the units as affordable housing for very low income households (50% or less of AMI). Projects that choose to include affordable units in lieu of paying the City's Affordable Housing Mitigation fee are automatically qualified to receive the State density bonus. The majority of developers in Berkeley have elected not to pay the affordable housing mitigation fee but to use the in-lieu option of adding 10% affordable units, which entitles them to the State density bonus and results in minimal in-lieu fees for the Housing Trust Fund. The proposed City density bonus would serve as an alternative to the State density bonus and provide much-needed added revenue for the Housing Trust Fund.

Condominium projects in Berkeley are not currently subject to an affordable housing mitigation fee. It is anticipated that the City Council will establish a housing mitigation fee for condominium projects. The City density bonus would establish an additional \$10,000 fee for condominium projects, in addition to whatever affordable housing mitigation fee is established by the Council for condominium projects.

Berkeley earlier had a different mechanism for requiring housing projects to contribute to the supply of affordable housing. Both rental and condominium projects were previously covered by the City's Inclusionary Housing ordinance, which required multi-unit housing projects to include 20% affordable housing or pay in-lieu fees. However, rental housing was made exempt from Berkeley's Inclusionary Housing ordinance by

