



PUBLIC HEARING

Agenda Item # 9

AGENDA REPORT SUMMARY

Meeting Date: September 26, 2017

Subject: Density Bonus Regulations

Prepared by: Jon Biggs, Community Development Director and
Katy Wisinski, Assistant City Attorney

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Density Bonus Ordinance Draft
2. Density Bonus Incentives Comparison
3. September 12, 2017 Agenda Report (Distributed with the September 12, 2017 City Council Packet)

Initiated by:

City Council

Previous Council Consideration:

September 27, 2106; October 4, 2016; October 18, 2016; November 15, 2016; March 14, 2017; and September 12, 2017

Fiscal Impact:

A significant fiscal impact is not anticipated for the preparation and adoption of the Density Bonus Regulations.

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

Policy Questions for Council Consideration:

Shall the City Council adopt a set of density bonus regulations that provide for affordable housing opportunities and have been tailored to address land use issues unique to Los Altos or shall it continue to rely on the State's Density Bonus regulations by reference?

Summary:

A City's Density Bonus regulations establish procedures that implement the State's Density Bonus requirements, which are intended to increase the production of affordable housing, as well as housing for designated populations, such as seniors, disabled veterans, and foster youth. At present, the Los Altos Municipal Code incorporates the State's Density Bonus Law by reference. The draft regulations provide rules intended to implement the State's directive to adopt a local ordinance implementing the statutory framework and address circumstances unique to Los Altos.



Subject: Density Bonus Regulations

Staff Recommendation:

Staff recommends adoption of the density bonus ordinance as drafted and recommended by the Planning and Transportation Commission



Subject: Density Bonus Regulations

Purpose

The proposed zoning code amendments are intended to bring the Municipal Code into consistency with State legislation and provide a framework for the exceptions to development standards that can be sought as incentives or waivers for a project seeking density bonus units.

Background

At its meeting of September 12, 2017, the City Council voted to continue the public hearing on the Density Bonus regulations to allow the presence of all members.

Council will take up the ordinance and deliberate action on the draft ordinance and determine an appropriate course of action with consideration of the options noted below.

Discussion/Analysis

The state Density Bonus Law includes multiple facets that are each very technical. One of these is a requirement that eligible applicants receive a certain number of incentives, ranging from one to three. Though they may take other forms, these incentives are most often reduced or modified development standards. Communities are limited in their ability to reject a requested incentive, with only three permitted grounds for denial. One of these grounds is that the requested incentive would have a 'specific, adverse impact' on public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. The state law defines a 'specific, adverse impact' as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety."

In an effort to communicate to potential applicants what types of incentives would be more acceptable to the community, some cities structure their density bonus ordinances to include a list of preferred incentives. In exchange for selecting a preferred incentive, these cities offer applicants an assurance of some type. The draft ordinance before the Council includes this type of framework. As written, in exchange for choosing a preferred (or 'on-menu') incentive, the City would agree that the selected incentive did not have a 'specific, adverse impact.' This effectively means that if an applicant chose one of these on-menu incentives, the City would have one less basis for potentially denying the request. (The remaining two grounds would be that the requested incentive is (1) contrary to state or federal law, or (2) does not result in identifiable and actual cost reductions to provide for affordable housing costs or for affordable rents.) The purpose of this framework is to steer applicants toward selecting incentives that the City and community find more tolerable than some potential alternatives.



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At the Planning and Transportation Commission hearing considering this ordinance, the Commission wrestled with the value of this idea in Los Altos. The relinquishment of one of only three grounds to challenge a requested denial is a substantial give. Ultimately, the Commission felt that the Council should have the chance to decide whether to keep this framework in place or remove it from the ordinance. Removing it would have the effect of reverting to the basic statutory system, whereby the City would simply evaluate any requested incentive and would have all three grounds for denying the request. Given how tightly state law confines cities' ability to regulate density bonus matters, this 'on-menu' list of preferred incentives represents the only substantial tailoring of the state law to the Los Altos community.

At the last meeting, a question arose as to the value of adopting a detailed local ordinance if the Council opts not to keep the 'on-menu' incentive system. Under the State Density Bonus Law, local governments are required to:

- (1) adopt procedures and timelines for processing a density bonus application;
- (2) provide a list of all documents and information required to be submitted with the density bonus application in order for the density application to be deemed complete; and
- (3) notify applicants for a density bonus whether the application is complete in a manner consistent with the Permit Streamlining Act requirements.

Even in the absence of a detailed list of preferred incentives, the ordinance would assist the City in fulfilling these requirements, with staff preparing additional documentation to solicit necessary information from applicants.

The State Density Bonus Law is a very complicated, highly technical body of law that communities around the state grapple with. It substantially diminishes our local land use authority over areas in which the City is accustomed to much greater latitude. The draft ordinance being considered by the City Council is an effort to provide some balance between the State's Legislation and the unique circumstances of Los Altos.

Options

- 1) Adopt Density Bonus Ordinance

Advantages: Introduces a set of regulations that provide affordable housing opportunities and addresses land use issues unique to Los Altos and fulfills the state requirement to adopt a local ordinance.

Disadvantages: May require frequent updating of code to keep pace with State's Density Bonus Law changes.



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2) Decline Adoption of Density Bonus Ordinance

Advantages: Provides for Density Bonus regulations by reference to State Legislation.

Disadvantages: Does not provide an ordinance tailored to address the unique characteristics of Los Altos or fulfill statutory requirement to adopt a local ordinance.

Recommendation

Staff recommends Option 1

ORDINANCE NO. 2017-435

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS
ALTOS AMENDING SECTION 14.28.040, DENSITY BONUSES, OF
THE LOS ALTOS MUNICIPAL CODE**

WHEREAS, it is a priority of the Los Altos City Council to further the housing goals identified in the Housing Element of the Los Altos General Plan; and

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require development standards that achieve projects that are in keeping with the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, the State of California has adopted a Density Bonus Law (California Government Code §§ 65915-65918) that regulates the provision of density bonuses for housing projects across the state; and

WHEREAS, the Density Bonus Law requires cities to adopt local ordinances implementing the state law; and

WHEREAS, staff has thus prepared a revised Density Bonus ordinance for the City of Los Altos, which is intended to replace existing Los Altos Municipal Code 14.28.040; and

WHEREAS, the revised Density Bonus regulations provide for additional affordable housing opportunities and include standards intended to achieve compatibility between density bonus projects and adjacent land uses; and

WHEREAS, the purpose of the Density Bonus regulations is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies; and

WHEREAS, on August 17, 2017 the Planning and Transportation Commission reviewed the proposed ordinance and voted 6-0, to recommend that the City Council approve the adoption of a new Section 14.28.040, Density Bonuses, finding that the revised regulations are in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the adopted general plan of the City; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended, as it can be seen with certainty that its adoption has no possibility of having a significant effect on the environment.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. After considering the record before it, including but not limited to the agenda report, presentation of staff, public comment, and discussion, the City Council hereby finds that adoption of this Ordinance is in the best interest for protection or promotion of the public health, safety, comfort, convenience, prosperity, and welfare, per Los Altos Municipal Code §14.86.080.

SECTION 2. AMENDMENT OF CODE. Title 14 (Zoning) of the Los Altos Municipal Code shall be revised to reflect that the current Section 14.28.040, Density Bonuses, is deleted in its entirety and a new Section 14.28.040 Density Bonuses, as reflected in Exhibit 1 of this ordinance (attached hereto and incorporated herein), is adopted and inserted in its place.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 4. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2017 and was thereafter, at a regular meeting held on _____, 2017 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mary Prochnow, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

EXHIBIT 1, DENSITY BONUS ORDINANCE

Chapter 14.28 - MULTIPLE-FAMILY AFFORDABLE HOUSING Section 14.28.040 – DENSITY BONUSES

A. Purpose.

The purpose of this Section is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies. In order to promote the construction of affordable units, density bonuses, development incentives, waivers, and parking alterations shall be granted pursuant to the provisions of this Section.

B. Definitions.

For the purposes of this Section, unless otherwise apparent from the context, certain words or phrases used in this Section are defined as follows:

1. “Affordable housing unit” means an ownership or rental dwelling unit affordable to households with extremely low, very low, low or moderate incomes as published periodically by HCD for households in Santa Clara County or equivalent as approved by the community development director. Calculations for the required affordable housing resulting in fractional units shall be rounded up to the next whole number.
2. “Area median income” (AMI) means the median family income in Santa Clara County as determined annually by HCD, adjusted for household size.
3. “Common interest development” means that as defined in Civil Code Section 4100.
4. “Concession or incentive” means any of the following:
 - a. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Health and Safety Code Division 13, Part 2.5 (commencing with Section 18901) to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).
 - b. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
 - c. Other regulatory incentives or concessions proposed by the developer or the city that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted

units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).

5. “Density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.
6. “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation, as specified in Government Code Section 65915, Subsection (o)(1).
7. “Disabled person” means a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of an impairment or, anyone who has a record of having that type of an impairment.
8. “Disabled veterans” means that as defined in California Government Code Section 18541.
9. “Dwelling unit” means a dwelling designed and intended for occupancy by a household.
10. “Floor Area Ratio” means the multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.
11. “HCD” means California Department of Housing and Community Development or any successor agency.
12. “Homeless person” means that as defined in the United States McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).
13. “Housing development project” means the construction of five or more new residential dwelling units, including mixed-use developments, the addition of five or more residential dwelling units to an existing building or buildings, and the remodeling of a building or buildings containing five or more residential dwelling units. For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded.
14. “Incentive,” see “concession or incentive.”
15. “Income, very low, low or moderate” means an annual income of a household that does not exceed the amounts designated for each income category as determined by HCD.
16. “Major transit stop” means that as defined in Public Resources Code Section 21155, Subdivision (b).

17. "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.
18. "Multiple-family residential projects" as applied in this Section means all residential projects exceeding four (4) units per acre and all mixed-use projects.
19. "Project" means the entire parcel of real property, including all structures thereon, all or part of which is intended to be rented or purchased for residential purposes.
20. "Residential hotel" means any building containing six or more guest rooms or efficiency dwelling units, which are intended or designed to be used, or are used, rented, or hired out to be occupied, or are occupied for sleeping purposes by guests, so long as the guest rooms or efficiency dwelling units are also the primary residence of those guests, but not including any building containing six or more guest rooms or efficiency dwelling units, which is primarily used by transient guests who do not occupy that building as their primary residence.
21. "Residential unit" means the same as "dwelling" as used in Los Altos Municipal Code Title 14.
22. "Restricted affordable unit" means a residential unit for which rental or mortgage amounts are restricted so as to be affordable to and occupied by very low, low or moderate income households.
23. "Senior citizen housing development" means a housing development project for senior citizens that has at least 35 units as defined in Civil Code Sections 51.3 and 51.12.
24. "Senior citizen mobilehome park" means a mobilehome park that limits residency based on age requirements for older persons pursuant to California Civil Code Sections 798.76 and 799.5.
25. "Senior citizens" means individuals who are at least 62 years of age, except that for projects of at least 35 units that are subject to this subdivision, a threshold of 55 years of age may be used, provided all applicable City, state and federal regulations are met.
26. "Special needs housing development" means that as defined in California Health and Safety Code Section 51312.
27. "Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety.

- 28. “Transitional foster youth” means that as defined in California Education Code Section 66025.9
- 29. “Unobstructed access to the major transit stop” means that from the development, a resident is able to access the major transit stop without encountering natural or constructed impediments.
- 30. “Waiver” means the deletion or reduction of any development standards that would otherwise have the effect of physically precluding the construction of a development identified and permitted in this Section.

C. Development eligibility, bonus densities, and incentive counts.

- 1. Eligible Developments, Bonus Densities, and Incentive Counts. The developments identified in this Subsection are eligible for density bonuses and/or incentives as well as parking ratio alterations and waivers. For each development, this Section provides levels of density bonus available and the number of incentives available. For applicable standards, see Subsections (E) (Density Bonus Standards), (F) (Incentive/Concessions Standards), (G) (Parking Ratio Alteration Standards), and (H) (Waivers Standards).
 - a. Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 10 percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following:
 - i. Density Bonus. A project that includes 10 percent low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 10 percent low income units, the density bonus shall be increased by 1.5 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Low Income Units	Percentage Density Bonus
10	20.0
11	21.5
12	23.0
13	24.5
14	26.0
15	27.5
16	29.0
17	30.5
18	32.0
19	33.5
20 or more	35.0

- ii. Incentives. A project that includes at least 10 percent low income units shall be granted one incentive. A project that includes at least 20 percent low income units

shall be granted two incentives. A project that includes at least 30 percent low income units shall be granted three incentives. See Table #####.

Table #####

Percentage Low Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

b. Housing Development With Very Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 5 percent of the total units of the project for very low income households, either for sale units or for rent, shall be granted the following:

i. Density Bonus. A project that includes 5 percent very low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 5 percent very low income units, the density bonus shall be increased by 2.5 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Very Low Income Units	Percentage Density Bonus
5	20.0
6	22.5
7	25.0
8	27.5
9	30.0
10	32.5
11 or more	35.0

ii. Incentives. A project that includes at least 5 percent very low income units shall be granted one incentive. A project that includes at least 10 percent very low income units shall be granted two incentives. A project that includes at least 15 percent very low income units shall be granted three incentives. See Table #####.

Table #####

Percentage Very Low Income Units	Number of Incentives
5 or more	1
10 or more	2
15 or more	3

c. Market Rate Senior Housing, for Sale or for Rent. A senior citizen housing development or a senior citizen mobilehome park, comprised of units for sale or for rent, shall be granted a minimum density bonus of 20 percent, which may be applied to the senior units only.

- d. Common Interest Development with Moderate Income Restricted Affordable Units, for Sale. A common interest development that includes at least 10 percent of its units for moderate income households, provided all of the development’s units are for sale, shall be granted the following:
 - i. Density Bonus. A development that includes 10 percent moderate income housing shall be granted a density bonus of 5 percent. For each 1 percent increase above the required 10 percent moderate income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40 or more	35

- ii. Incentives. A project that includes at least 10 percent moderate income units shall be granted one incentive. A project that includes at least 20 percent moderate income units shall be granted two incentives. A project that includes at least 30 percent moderate income units shall be granted three incentives. See Table #####.

Table #####

Percentage Moderate Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

- e. Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons. A housing development project that includes at least 10 percent of the total units of the project for transitional foster youth, disabled veterans, or homeless persons; provided these units are at the affordability level of very low income housing, and provided an affordability restriction of 55 years is recorded against these units, shall be granted a density bonus equal to 20 percent of the number of these units.
- f. Land Donated for Very Low Income Housing. A housing development project that, by way of the application for subdivision map, parcel map, or other residential development approval, donates land to the City that satisfies the requirements of California Government Code Section 65915(g) to include 10 percent the total units of the project for very low income households shall be granted a density bonus of 15 percent. For each 1 percent increase above the required 10 percent very low income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Very Low Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31

27	32
28	33
29	34
30 or more	35

- g. Child Care Facility included with a Housing Development Project. A housing development project, which conforms to the requirements of Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development with Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons) of this section, and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted one of the following:
 - i. An additional density bonus that is, for purposes of calculating residential density, an increase in the floor area of the project equal to the floor area of the child care facility included in the project; or
 - ii. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

- h. Condominium Conversion to Moderate or Low Income Housing. Subject to the requirements of California Government Code Section 65915.5, a housing development project that involves the conversion of apartments into condominiums and that includes at least 33 percent of the total units of the project for low or moderate income households or 15 percent of the total units of the project for lower income households, shall be granted one of the following:
 - i. A density bonus of 25 percent; or
 - ii. Up to three incentives of, in the aggregate, equivalent financial value to the density bonus of 25 percent.

2. Ineligible Developments.

- a. Vacated Rental Property, Generally. A housing development project is ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the development is located on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the date of the application described in Subsection 14.28.040.A (Application), have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:

- i. The proposed housing development replaces those units, as defined in Subsection (C)(2)(c) (Replacement); and
- ii. Either of the following applies:
 - A. The proposed development, inclusive of the units replaced pursuant to this Subsection, contains affordable units at the percentages required in Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.
- b. Vacated Rental Property, Condominium Conversion. An applicant for a condominium conversion described in Subsection (C)(1)(h) (Condominium Conversion to Moderate or Low Income Housing) shall be ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application Subsection (D)(1) (Application), have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:
 - i. The proposed condominium project replaces those units, as defined in Subsection (c) (Replacement) below; and
 - ii. Either of the following applies:
 - A. The proposed condominium project, inclusive of the units replaced, contains affordable units at the percentages set forth in Subsection (D)(1) (Condominium Conversion to Moderate or Low Income Housing); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.
- c. Replacement. For purposes of this Subsection (C)(2) (Ineligible Developments), "replace" shall mean either of the following:
 - i. If any dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) or (C)(2)(b) (Vacated Rental Property, Condominium Conversion) are

occupied on the date an application as described in Subsection (D)(1) (Application) is submitted, the proposed housing development shall provide at least the same number of units of equivalent size, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in Subsection (C)(2)(a) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to covenant requirements of Subsection I (Covenants).

- ii. If all dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to the covenant requirements of Subsection (I) (Covenants).

D. Application processing and review.

1. Application. An application for a density bonus, incentives, parking ratio alterations, and/or waiver or any other provision in this Section shall:
 - a. Be submitted in conjunction with an applicable development permit application;

- b. Be made on a form provided by the Community Development Department;
 - c. Be accompanied by applicable fees;
 - d. Include reasonable documentation, using forms prepared by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing;
 - e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this Section or with the concessions and/or incentives requested; and
 - f. Include any other documentation or materials required by this Section or by the City for the purpose of density bonus, incentives, parking ratio alterations, and/or waivers or any other provision in this Section.
2. Review Authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.

E. Density bonus standards.

Developments eligible for density bonuses as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below:

1. No Waiver Required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.
2. Density Calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located.
3. Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
4. Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.
5. Other Discretionary Approval. Approval of density bonus units shall not, in and of itself, trigger other discretionary approvals required by this Code.

6. Other Affordable Housing Subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing.
7. Optional Density Bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.
8. Lesser Percentage of Density Bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.

F. Incentive standards.

A development eligible for incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in Subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).

1. On-Menu Incentives.

The City Council has determined that the On-Menu Incentives listed below would not have a specific, adverse impact.

- a. Lot Coverage. Up to 20 percent increase in lot coverage limits.
- b. Lot Width. Up to 20 percent decrease from a lot width requirement.
- c. Floor Area Ratio. A percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35 percent.
- d. Height. In any zone in which the height or number of stories is limited, a maximum of 11 additional feet or one additional story may be added to the underlying base height.
- e. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
- f. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines “O,” and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

2. Off-Menu Incentives. An applicant may request an incentive not included in Subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested Off-Menu Incentive may have a specific, adverse impact.
3. Denial of Requested Incentive.

The reviewing authority may deny a request for an incentive only if it makes a written finding, based on substantial evidence, of any of the following:

- a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Subsection (I).
- b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households
- c. The concession or incentive would be contrary to state or federal law.

G. Parking Ratio Alteration Standards.

1. General Parking Requirement. Developments eligible for density bonuses and/or incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking ratio alteration as provided in Subsections (G)(2) (On-Menu Parking Ratio Alterations) or (G)(3) (Off-Menu Parking Ratio Alterations).
2. On-Menu Parking Ratio Alterations.
 - a. For Any Development Eligible for a Density Bonus. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, of a development, that exceeds the following ratios:
 - i. For zero to one bedroom, one onsite parking space.
 - ii. For two to three bedrooms, two onsite parking spaces.
 - iii. For four and more bedrooms, two and one-half parking spaces.
 - b. For Low or Very Low Income Housing near Major Transit Stop. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedrooms if:

- i. The development includes the maximum percentage of low or very Low Income units; and
 - ii. The development is located within one-half mile from a major transit stop; and
 - iii. There is unobstructed access to the major transit stop from the development.
 - c. For Senior Housing Developments with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedrooms if:
 - i. The development is a Senior Housing Development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, at affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - d. Special Needs Housing Development with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.3 parking spaces per bedrooms if:
 - i. The development is a special needs housing development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, an affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - e. No Change to Incentive Count. A request pursuant to these On-Menu Parking Ratio Alterations shall neither reduce nor increase the number of incentives to which the applicant is entitled pursuant to Subsections (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).
3. Off-Menu Parking Ratio Alterations. An applicant may request parking ratio alterations beyond those provided in Subsection (G)(2) (On-Menu Parking Ratio Alterations) as an incentive pursuant to (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).
 4. Optional Parking Ratio Alterations. This Section does not preclude the City from reducing or eliminating a parking ratio requirement for development projects of any type in any location.

5. Provision of Parking. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.
6. Parking Study. Notwithstanding the parking ratio alterations available in Subsections (G)(2) (On-Menu Parking Ratio Alterations) and (G)(3) (Off-Menu Parking Ratio Alterations), the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven years from the date of the application described in Subsection (D)(1) (Application), then the City may impose a higher parking ratio not to exceed the ratio described in Subsection (G)(2)(a) (For Any Development), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low and very low income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

H. Waiver standards.

1. Waivers or Reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this Section, and may request a meeting with the City to discuss the proposed waiver or reduction.
2. No Change in Other Incentives. A proposal for the waiver or reduction of development standards described in Subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this Section.
3. Denial of Requested Waiver.

The reviewing authority may deny a request for a waiver under this Section if it finds the waiver would:

- a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this Section at the densities or with the incentives permitted under this Section; or
- b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

- c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- d. Be contrary to state or federal law.

I. Covenants.

1. Covenant Required. Prior to issuance of a building permit for a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in Subsection (I)(2) (Covenants for Specific Developments).
2. Covenants for Specific Developments.
 - a. For Rental Developments for Low or Very Low Income Households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the City shall be recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least 55 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.
 - b. For For-Sale Developments for Very Low, Low, and Moderate Income Households. For a for-sale development that contains housing for initial occupants of very low, low, and/or moderate incomes, an equity sharing agreement acceptable to the City and consistent with the for-sale requirements of California Government Code Section 65915(c)(2) shall be recorded with the Santa Clara County Recorder.
3. Private Right of Action. Any covenant described in this Section must provide for a private right of enforcement by the City, any tenant, or owner of any building to which a covenant and agreement applies.
4. Conflict of Durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control.

J. State regulations.

All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this Section.

Density Bonus Ordinance – Incentives

EXISTING LANGUAGE

F. Incentive standards.

A development eligible for incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in Subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).

1. On-Menu Incentives. The City Council has determined that the On-Menu Incentives listed below would not have a specific, adverse impact.

a. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts an R1 or more restrictively zoned property.

b. Lot Coverage. Up to 20 percent increase in lot coverage limits.

c. Lot Width. Up to 20 percent decrease from a lot width requirement.

d. Floor Area Ratio. A percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35 percent.

e. Height. In any zone in which the height or number of stories is limited, a maximum of 11 additional feet or one additional story may be added to the underlying base height.

f. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.

g. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines “O,” and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

2. Off-Menu Incentives. An applicant may request an incentive not included in Subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested Off-Menu Incentive may have a specific, adverse impact.

3. Denial of Requested Incentive. The reviewing authority may deny a request for an incentive only if it makes a written finding, based on substantial evidence, of any of the following:

POTENTIAL REVISION

F. Incentive standards.

1. A development eligible for incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may request such incentives in its application for a density bonus. The review authority will determine whether any such requested incentive will be subject to denial as set forth in subsection 2.

2. Denial of Requested Incentive. The reviewing authority may deny a request for an incentive only if it makes a written finding, based on substantial evidence, of any of the following:

a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Subsection (I).

b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households

c. The concession or incentive would be contrary to state or federal law.

Density Bonus Ordinance – Incentives

EXISTING LANGUAGE

a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Subsection (I).

b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households

c. The concession or incentive would be contrary to state or federal law.



PUBLIC HEARING

Agenda Item # 5

AGENDA REPORT SUMMARY

Meeting Date: September 12, 2017

Subject: Ordinance No. 2017-435: Density Bonus Regulations

Prepared by: Jon Biggs, Community Development Director &
Katy Wisinski, Assistant City Attorney

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2017-435
2. Planning and Transportation Commission Minutes
3. Density Bonus Application Submittal Requirements
4. Public Correspondence

Initiated by:

City Council

Previous Council Consideration:

September 27, 2106; October 4, 2016; October 18, 2016; November 15, 2016; and March 14, 2017.

Fiscal Impact:

A significant fiscal impact is not anticipated for the preparation and adoption of the Density Bonus Regulations

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

Policy Questions for Council Consideration:

- Shall the City Council adopt a set of density bonus regulations that provide for affordable housing opportunities and have been tailored to address land use issues unique to Los Altos or shall it continue to rely on the State's Density Bonus regulations by reference?

Summary:

- A City's Density Bonus regulations establish procedures that implement the State's Density Bonus requirements, which are intended to increase the production of affordable housing, as well as housing for designated populations, such as seniors, disabled veterans and foster youth. At present, the Los Altos Municipal Code incorporates the State's Density Bonus Law by reference. The draft regulations provide rules intended to implement the State's directive adopt a local ordinance implementing the statutory framework and address circumstances unique to Los Altos.

Staff Recommendation:

Introduce and waive further reading of Ordinance No. 2017-435 adopting density bonus regulations



Subject: Ordinance No. 2017-435: Density Bonus Regulations

Purpose

The proposed zoning code amendments are intended to bring the Municipal Code into consistency with State legislation and provide a framework for the exceptions to development standards that can be sought as incentives or waivers for a project seeking density bonus units.

Background

In California, local land use decisions are largely regulated by cities. This principle is included in the state Constitution, which acknowledges cities' authority to "make and enforce within [their] limits all police, sanitary and other ordinances and regulations not in conflict with general laws." (Cal. Const. Art. XI, § 7.) The State of California has, however, adopted a number of "general laws" that limit or supersede cities' regulatory authority. One such general law is the State's Density Bonus Law (Government Code §§ 65915-65918).

The stated purpose of the Density Bonus Law is to incentivize developers to bring forward such projects – and to limit cities' ability to deny them. In this regard, the final provision of the statute states, "this chapter shall be interpreted liberally in favor of producing the maximum number of total housing units."

Cities are required to comply with the Density Bonus Law and must adopt an ordinance that specifies how compliance with it will be implemented. In Los Altos, this is currently accomplished by one sentence provision of the Municipal Code that incorporates the state statute by reference (Los Altos Municipal Code § 14.28.040). This section reads as follows:

14.28.040 - Density bonuses and development incentives.

In order to promote the construction of affordable units, density bonuses and development incentives including, but not limited to, modified zoning district development standards, fast-tracking and/or fee waivers shall be granted pursuant to the provisions of Chapter 4.3, Section 65915, of the California Government Code, Density Bonus and Other Incentives, and any amendments hereto, such provisions shall be incorporated by reference into this chapter.

Statutory Framework

Generally speaking, the Density Bonus Law, which dates back to 1979, sets up a framework under which land use developers who propose projects that include a certain percentage of (a) affordable, (b) senior, or (c) designated population housing, or donate land for such housing, or include additional childcare in such housing, are required to be given an increase in the density applicable to their projects.



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In addition to the density bonus units, a developer can also seek various inducements related to site development standards. These inducements are based on the percentage of BMR or otherwise qualifying units being proposed and include:

1. Incentives or concessions. These are usually reductions in site development standards or zoning code requirements, such as a reduction of the applicable setback. Incentives or concessions (collectively, ‘incentives’) can also include approval of mixed use zoning or other regulatory inducements that will result in identifiable, actual cost reductions to provide for affordable housing costs. Developers are only permitted a certain number of incentives (zero to three), depending on the percentages and types of qualifying housing being offered;
2. Waivers or reductions of development standards. These can be requested by a developer of a density bonus project if the development standard in question would have the effect of physically precluding the construction of the density bonus project with its requested concessions or incentives. These waivers or reductions (collectively, ‘waivers’) are not limited in number; and/or
3. Parking ratio reductions. The Density Bonus Law mandates low parking ratios for density bonus projects, setting a default ratio for all such qualifying projects and then lower requirements for specified types of density bonus projects.

There are many components to the State’s Density Bonus regulations and as noted earlier in this report, cities are required to adopt local density bonus ordinances. Los Altos has done this by reference. Recently, however, the City has determined it would be better served by the adoption of a more comprehensive local ordinance.

DRAFT ORDINANCE

The draft ordinance implements the State Density Bonus Law, adding a limited number of local references. The city attorney’s office has had a chance to work with Community Development Department to develop the draft being considered by the City Council. Collectively, we are recommending adoption of a density bonus ordinance that includes the following aspects:

1. **Eligibility Criteria (§ 14.28.040(C)(1)).** In order to receive the advantages of the Density Bonus Law, a developer must first propose a qualifying project. The ordinance thus includes tables that identify the percentage of BMR or other qualifying units that need to be provided to receive a density increase. It also establishes the number of incentives a project would receive (which is likewise based on the percentage of qualifying units provided).
2. **Ineligibility (§ 14.28.040(C)(2)).** Under the State Density Bonus Law, certain types of projects would *not* qualify for a density bonus, unless enumerated criteria are met. (For example, if the proposed project would replace an existing affordable housing development



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and failed to replace the affordable units.) The ordinance contains a section addressing ‘ineligible developments’ to track these statutory requirements.

3. **Application Processing and Review (§ 14.28.040(D)).** The Density Bonus Law requires cities to adopt local ordinances that specify how compliance with the state law will be achieved. This section of the ordinance addresses density bonus application requirements and specifies the review authority for such projects.
4. **Density Bonus Standards (§ 14.28.040(E)).** The Density Bonus Law contains numerous requirements that attach to qualifying projects, including how density is calculated, the manner of addressing fractional calculations, the ability of an applicant to accept a lesser bonus than they would otherwise be entitled to, and so forth. This section catches these miscellaneous provisions.
5. **Incentives (§ 14.28.040(F)).** One of the inducements a developer who qualifies for a density bonus may request under the statute is one or more concessions or incentives. These generally come in the form of reduced or modified development standards that will apply to the proposed project (e.g., setback, open space requirements, lot width, etc.). Developers are limited in the number of incentives that can be requested.

Under the Density Bonus Law, developers can request whatever incentive they desire (provided they comply with the statutory definition of that term). The law does not include a mechanism for cities to limit the range or type of incentives that can be requested. Rather, it sets out the only grounds upon which a requested incentive may be denied:

- a. The incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Section 14.28.090.
- b. The incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households
- c. The incentive would be contrary to state or federal law.

(This list is likewise included in the ordinance.) The City has expressed an interest in sharing with density bonus applicants the types of incentives that might be more palatable to the



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community at large because they would be pre-determined not to have a “specific, adverse impact” on the public health, safety, physical environment, or historic real property. (Such an impact would otherwise be one of the three grounds for denying a requested incentive.) To implement this idea, the ordinance includes a list of ‘On Menu Incentives.’ If the City offers this finding, we would be communicating to applicants that the City would not challenge the selection of an On-Menu Incentive on these grounds. ‘Off-Menu Incentives,’ on the other hand, would still be subject to denial on this basis.

On-Menu incentives that are being recommended for consideration in the density bonus ordinance include:

1. Lot Coverage. Up to 20 percent increase in lot coverage limits.
2. Lot Width. Up to 20 percent decrease from a lot width requirement.
3. Floor Area Ratio. A percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35 percent.
4. Height. In any zone in which the height or number of stories is limited, a maximum of 11 additional feet or one additional story may be added to the underlying base height.
5. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
6. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines “O,” and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

The Planning Commission considered this ‘On-Menu’ and ‘Off-Menu’ framework and weighed its advantages and disadvantages. They were concerned that making a blanket finding the listed incentives categorically had no specific, adverse impact, could be disadvantageous to the City, as each development site is unique. However, the Commission ultimately left this system in the draft ordinance with the request that the Council carefully consider its inclusion.

6. **Parking Ratio Standards (§ 14.28.040(G)).** As noted above, qualifying density bonus projects are eligible for a reduced parking ratio that is dictated by the Density Bonus Law. In addition, certain types of density bonus projects are eligible for even lower parking ratios. This section of the ordinance sets out those ratios and the project features necessary to qualify for them. As written, it speaks to ‘On-Menu’ parking standards, which are simply the standards set out in the Density Bonus Law. It also includes ‘Off-Menu’ parking standards for those



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projects that do not qualify for the other reductions but may wish to use one of their incentives as a means of reducing parking. Other parking criteria are also included.

7. **Waivers (§ 14.28.040(H)).** As noted above, density bonus applicants can request a waiver or reduction (collectively referred to as a ‘waiver’) of an otherwise applicable development standard if that standard would have the effect of physically precluding the construction of the density bonus project with its requested incentives. These waivers are not limited in number. Just as requested incentives have their own grounds for denial, so, too, do waivers. Permissible grounds upon which a requested waiver can be denied have been included in the draft ordinance.
8. **Covenants (§ 14.28.040(I)).** Given that the stated purpose of the Density Bonus Law is the production and preservation of affordable and specialty housing, it is logical that the statute requires projects benefitting from the statute to record a deed restriction or otherwise take action through the recordation of an enforceable covenant to accomplish that goal. The covenant restrictions of the ordinance have been crafted to match the current state law requirements, which have changed considerably over the years.
1. **Statutory Updates (§ 14.28.040(J)).** The Density Bonus Law is a highly technical piece of legislation with many additional features not listed here or included in the ordinance. They will apply whether or not the City explicitly adopts them, but to point future users of the ordinance to these additional requirements, we have included a section that specifically incorporates the provisions of the Density Bonus Law in its entirety.

Although the basic premise of the Density Bonus Law remains the same, newly enacted legislation at the state level has thoroughly modified the practical effects of the Law, with revised density bonus eligibility parameters, expanded and more stringent zoning concession mandates, and broadened applicability of the entire density bonus program (to now senior housing projects, mixed use projects, and redevelopment projects, as well as more typical new residential housing projects). The draft ordinance provides a density bonus ordinance that is consistent with these newly enacted laws at the state level.

In an effort to appropriately review and guide density bonus projects, staff has introduced a density bonus project submittal requirements checklist, which is included as an attachment to this agenda report. This checklist lets those considering a density bonus project know early in the project development phase what information the City will be seeking and requesting so that it can best evaluate and develop recommendations on such projects. If the draft density bonus ordinance is approved, this form will be updated. Finally, staff notes that the Density Bonus regulations are applicable across the entire City.



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Discussion/Analysis

The state Density Bonus Law program is a very complicated, highly technical body of law that communities around the state grapple with. It substantially diminishes our local land use authority over areas in which the City is accustomed to much greater latitude. The draft ordinance being considered by the City Council is an effort to provide some balance between the State's Legislation and the unique circumstances of Los Altos.

Options

1) Adopt Density Bonus Ordinance

Advantages: Introduces a set of regulations that provide affordable housing opportunities and addresses land use issues unique to Los Altos and fulfills the State requirement to adopt a local ordinance.

Disadvantages: May require frequent updating of code to keep pace with State's Density Bonus Law changes.

2) Decline Adoption of Density Bonus Ordinance

Advantages: Provides for Density Bonus regulations by reference to State Legislation.

Disadvantages: Does not provide an ordinance tailored to address the unique characteristics of Los Altos or fulfill statutory requirement to adopt a local ordinance.

Recommendation

Staff recommends Option 1.

ORDINANCE NO. 2017-435

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS
ALTOS AMENDING SECTION 14.28.040, DENSITY BONUSES, OF
THE LOS ALTOS MUNICIPAL CODE**

WHEREAS, it is a priority of the Los Altos City Council to further the housing goals identified in the Housing Element of the Los Altos General Plan; and

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require development standards that achieve projects that are in keeping with the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, the State of California has adopted a Density Bonus Law (California Government Code §§ 65915-65918) that regulates the provision of density bonuses for housing projects across the state; and

WHEREAS, the Density Bonus Law requires cities to adopt local ordinances implementing the state law; and

WHEREAS, staff has thus prepared a revised Density Bonus ordinance for the City of Los Altos, which is intended to replace existing Los Altos Municipal Code 14.28.040; and

WHEREAS, the revised Density Bonus regulations provide for additional affordable housing opportunities and include standards intended to achieve compatibility between density bonus projects and adjacent land uses; and

WHEREAS, the purpose of the Density Bonus regulations is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies; and

WHEREAS, on August 17, 2017 the Planning and Transportation Commission reviewed the proposed ordinance and voted 6-0, to recommend that the City Council approve the adoption of a new Section 14.28.040, Density Bonuses, finding that the revised regulations are in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the adopted general plan of the City; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended, as it can be seen with certainty that its adoption has no possibility of having a significant effect on the environment.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. After considering the record before it, including but not limited to the agenda report, presentation of staff, public comment, and discussion, the City Council hereby finds that adoption of this Ordinance is in the best interest for protection or promotion of the public health, safety, comfort, convenience, prosperity, and welfare, per Los Altos Municipal Code §14.86.080.

SECTION 2. AMENDMENT OF CODE. Title 14 (Zoning) of the Los Altos Municipal Code shall be revised to reflect that the current Section 14.28.040, Density Bonuses, is deleted in its entirety and a new Section 14.28.040 Density Bonuses, as reflected in Exhibit 1 of this ordinance (attached hereto and incorporated herein), is adopted and inserted in its place.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 4. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2017 and was thereafter, at a regular meeting held on _____, 2017 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Mary Prochnow, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

EXHIBIT 1, DENSITY BONUS ORDINANCE

Chapter 14.28 - MULTIPLE-FAMILY AFFORDABLE HOUSING Section 14.28.040 – DENSITY BONUSES

A. Purpose.

The purpose of this Section is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915 to 65918, and to increase the production of affordable housing, consistent with City policies. In order to promote the construction of affordable units, density bonuses, development incentives, waivers, and parking alterations shall be granted pursuant to the provisions of this Section.

B. Definitions.

For the purposes of this Section, unless otherwise apparent from the context, certain words or phrases used in this Section are defined as follows:

1. “Affordable housing unit” means an ownership or rental dwelling unit affordable to households with extremely low, very low, low or moderate incomes as published periodically by HCD for households in Santa Clara County or equivalent as approved by the community development director. Calculations for the required affordable housing resulting in fractional units shall be rounded up to the next whole number.
2. “Area median income” (AMI) means the median family income in Santa Clara County as determined annually by HCD, adjusted for household size.
3. “Common interest development” means that as defined in Civil Code Section 4100.
4. “Concession or incentive” means any of the following:
 - a. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Health and Safety Code Division 13, Part 2.5 (commencing with Section 18901) to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).
 - b. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
 - c. Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Health and Safety Code Section

50052.5, or for rents for the targeted units to be set as specified in subdivision Government Code Section 65915, Subdivision (c).

5. “Density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.
6. “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation, as specified in Government Code Section 65915, Subsection (o)(1).
7. “Disabled person” means a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of an impairment or, anyone who has a record of having that type of an impairment.
8. “Disabled veterans” means that as defined in California Government Code Section 18541.
9. “Dwelling unit” means a dwelling designed and intended for occupancy by a household.
10. “Floor Area Ratio” means the multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.
11. “HCD” means California Department of Housing and Community Development or any successor agency.
12. “Homeless person” means that as defined in the United States McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).
13. “Housing development project” means the construction of five or more new residential dwelling units, including mixed-use developments, the addition of five or more residential dwelling units to an existing building or buildings, and the remodeling of a building or buildings containing five or more residential dwelling units. For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded.
14. “Incentive,” see “concession or incentive.”
15. “Income, very low, low or moderate” means an annual income of a household that does not exceed the amounts designated for each income category as determined by HCD.
16. “Major transit stop” means that as defined in Public Resources Code Section 21155, Subdivision (b).

17. "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.
18. "Multiple-family residential projects" as applied in this Section means all residential projects exceeding four (4) units per acre and all mixed-use projects.
19. "Project" means the entire parcel of real property, including all structures thereon, all or part of which is intended to be rented or purchased for residential purposes.
20. "Residential hotel" means any building containing six or more guest rooms or efficiency dwelling units, which are intended or designed to be used, or are used, rented, or hired out to be occupied, or are occupied for sleeping purposes by guests, so long as the guest rooms or efficiency dwelling units are also the primary residence of those guests, but not including any building containing six or more guest rooms or efficiency dwelling units, which is primarily used by transient guests who do not occupy that building as their primary residence.
21. "Residential unit" means the same as "dwelling" as used in Los Altos Municipal Code Title 14.
22. "Restricted affordable unit" means a residential unit for which rental or mortgage amounts are restricted so as to be affordable to and occupied by very low, low or moderate income households.
23. "Senior citizen housing development" means a housing development project for senior citizens that has at least 35 units as defined in Civil Code Sections 51.3 and 51.12.
24. "Senior citizen mobilehome park" means a mobilehome park that limits residency based on age requirements for older persons pursuant to California Civil Code Sections 798.76 and 799.5.
25. "Senior citizens" means individuals who are at least 62 years of age, except that for projects of at least 35 units that are subject to this subdivision, a threshold of 55 years of age may be used, provided all applicable City, state and federal regulations are met.
26. "Special needs housing development" means that as defined in California Health and Safety Code Section 51312.
27. "Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety.

- 28. “Transitional foster youth” means that as defined in California Education Code Section 66025.9
- 29. “Unobstructed access to the major transit stop” means that from the development, a resident is able to access the major transit stop without encountering natural or constructed impediments.
- 30. “Waiver” means the deletion or reduction of any development standards that would otherwise have the effect of physically precluding the construction of a development identified and permitted in this Section.

C. Development eligibility, bonus densities, and incentive counts.

- 1. Eligible Developments, Bonus Densities, and Incentive Counts. The developments identified in this Subsection are eligible for density bonuses and/or incentives as well as parking ratio alterations and waivers. For each development, this Section provides levels of density bonus available and the number of incentives available. For applicable standards, see Subsections (E) (Density Bonus Standards), (F) (Incentive/Concessions Standards), (G) (Parking Ratio Alteration Standards), and (H) (Waivers Standards).
 - a. Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 10 percent of the total units of the project for low income households, either in for sale or for rent, shall be granted the following:
 - i. Density Bonus. A project that includes 10 percent low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 10 percent low income units, the density bonus shall be increased by 1.5 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Low Income Units	Percentage Density Bonus
10	20.0
11	21.5
12	23.0
13	24.5
14	26.0
15	27.5
16	29.0
17	30.5
18	32.0
19	33.5
20 or more	35.0

- ii. Incentives. A project that includes at least 10 percent low income units shall be granted one incentive. A project that includes at least 20 percent low income units

shall be granted two incentives. A project that includes at least 30 percent low income units shall be granted three incentives. See Table #####.

Table #####

Percentage Low Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

b. Housing Development With Very Low Income Restricted Affordable Units, for Sale or for Rent. A housing development project that includes at least 5 percent of the total units of the project for very low income households, either for sale units or for rent, shall be granted the following:

i. Density Bonus. A project that includes 5 percent very low income housing shall be granted a density bonus of 20 percent. For each 1 percent increase above the required 5 percent very low income units, the density bonus shall be increased by 2.5 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Very Low Income Units	Percentage Density Bonus
5	20.0
6	22.5
7	25.0
8	27.5
9	30.0
10	32.5
11 or more	35.0

ii. Incentives. A project that includes at least 5 percent very low income units shall be granted one incentive. A project that includes at least 10 percent very low income units shall be granted two incentives. A project that includes at least 15 percent very low income units shall be granted three incentives. See Table #####.

Table #####

Percentage Very Low Income Units	Number of Incentives
5 or more	1
10 or more	2
15 or more	3

c. Market Rate Senior Housing, for Sale or for Rent. A senior citizen housing development or a senior citizen mobilehome park, comprised of units for sale or for rent, shall be granted a minimum density bonus of 20 percent, which may be applied to the senior units only.

- d. Common Interest Development with Moderate Income Restricted Affordable Units, for Sale. A common interest development that includes at least 10 percent of its units for moderate income households, provided all of the development’s units are for sale, shall be granted the following:
 - i. Density Bonus. A development that includes 10 percent moderate income housing shall be granted a density bonus of 5 percent. For each 1 percent increase above the required 10 percent moderate income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Moderate Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40 or more	35

- ii. Incentives. A project that includes at least 10 percent moderate income units shall be granted one incentive. A project that includes at least 20 percent moderate income units shall be granted two incentives. A project that includes at least 30 percent moderate income units shall be granted three incentives. See Table #####.

Table #####

Percentage Moderate Income Units	Number of Incentives
10 or more	1
20 or more	2
30 or more	3

- e. Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons. A housing development project that includes at least 10 percent of the total units of the project for transitional foster youth, disabled veterans, or homeless persons; provided these units are at the affordability level of very low income housing, and provided an affordability restriction of 55 years is recorded against these units, shall be granted a density bonus equal to 20 percent of the number of these units.
- f. Land Donated for Very Low Income Housing. A housing development project that, by way of the application for subdivision map, parcel map, or other residential development approval, donates land to the City that satisfies the requirements of California Government Code Section 65915(g) to include 10 percent the total units of the project for very low income households shall be granted a density bonus of 15 percent. For each 1 percent increase above the required 10 percent very low income units, the density bonus shall be increased by 1 percent, up to a maximum density bonus of 35 percent. See Table #####.

Table #####

Percentage Very Low Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31

27	32
28	33
29	34
30 or more	35

- g. Child Care Facility included with a Housing Development Project. A housing development project, which conforms to the requirements of Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development with Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons) of this section, and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted one of the following:
 - i. An additional density bonus that is, for purposes of calculating residential density, an increase in the floor area of the project equal to the floor area of the child care facility included in the project; or
 - ii. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

- h. Condominium Conversion to Moderate or Low Income Housing. Subject to the requirements of California Government Code Section 65915.5, a housing development project that involves the conversion of apartments into condominiums and that includes at least 33 percent of the total units of the project for low or moderate income households or 15 percent of the total units of the project for lower income households, shall be granted one of the following:
 - i. A density bonus of 25 percent; or
 - ii. Up to three incentives of, in the aggregate, equivalent financial value to the density bonus of 25 percent.

2. Ineligible Developments.

- a. Vacated Rental Property, Generally. A housing development project is ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the development is located on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the date of the application described in Subsection 14.28.040.A (Application), have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:

- i. The proposed housing development replaces those units, as defined in Subsection (C)(2)(c) (Replacement); and
- ii. Either of the following applies:
 - A. The proposed development, inclusive of the units replaced pursuant to this Subsection, contains affordable units at the percentages required in Subsections (C)(1)(a) (Housing Development with Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(b) (Housing Development Very Low Income Restricted Affordable Units, for Sale or for Rent), (C)(1)(c) (Market Rate Senior Housing, for Sale or for Rent), (C)(1)(d) (Common Interest Development with Moderate Income Restricted Affordable Units, for Sale), or (C)(1)(e) (Housing for Transitional Foster Youth, Disabled Veterans, or Homeless Persons); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.
- b. Vacated Rental Property, Condominium Conversion. An applicant for a condominium conversion described in Subsection (C)(1)(h) (Condominium Conversion to Moderate or Low Income Housing) shall be ineligible for a density bonus, incentives, parking alterations, or any other concessions provided in this Section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application Subsection (D)(1) (Application), have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income; subject to any other form of governmental rent or price control; or occupied by lower or very low income households, unless:
 - i. The proposed condominium project replaces those units, as defined in Subsection (c) (Replacement) below; and
 - ii. Either of the following applies:
 - A. The proposed condominium project, inclusive of the units replaced, contains affordable units at the percentages set forth in Subsection (D)(1) (Condominium Conversion to Moderate or Low Income Housing); or
 - B. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a low or very low income household.
- c. Replacement. For purposes of this Subsection (C)(2) (Ineligible Developments), "replace" shall mean either of the following:
 - i. If any dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) or (C)(2)(b) (Vacated Rental Property, Condominium Conversion) are

occupied on the date an application as described in Subsection (D)(1) (Application) is submitted, the proposed housing development shall provide at least the same number of units of equivalent size, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. For unoccupied dwelling units described in Subsection (C)(2)(a) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to covenant requirements of Subsection I (Covenants).

- ii. If all dwelling units described in Subsections (C)(2)(a) (Vacated Rental Property, Generally) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to the covenant requirements of Subsection (I) (Covenants).

D. Application processing and review.

1. Application. An application for a density bonus, incentives, parking ratio alterations, and/or waiver or any other provision in this Section shall:
 - a. Be submitted in conjunction with an applicable development permit application;

- b. Be made on a form provided by the Community Development Department;
 - c. Be accompanied by applicable fees;
 - d. Include reasonable documentation, using forms prepared by the City, and supporting materials that demonstrate how any concessions and/or incentives requested by applicant result in identifiable and actual cost reductions to provide the affordable housing;
 - e. Include reasonable documentation and supporting materials that demonstrate how a requested modification to or waiver of an applicable development standard is needed in order to avoid physically precluding the construction of the proposed project at the densities authorized under this Section or with the concessions and/or incentives requested; and
 - f. Include any other documentation or materials required by this Section or by the City for the purpose of density bonus, incentives, parking ratio alterations, and/or waivers or any other provision in this Section.
2. Review Authority. Applications shall be reviewed by the review authority charged to review the applicable development permit application.

E. Density bonus standards.

Developments eligible for density bonuses as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive the density bonuses as provided below:

- 1. No Waiver Required. The granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.
- 2. Density Calculation. The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located.
- 3. Fractional Units. All density bonus calculations shall be rounded up to the next whole number including the base density, Restricted Affordable units, and the number of affordable units required to be eligible for a density bonus.
- 4. Minimum Number of Dwelling Units. For the purpose of establishing the minimum number of five dwelling units in a project, the restricted affordable units shall be included and density bonus units shall be excluded.
- 5. Other Discretionary Approval. Approval of density bonus units shall not, in and of itself, trigger other discretionary approvals required by this Code.

6. Other Affordable Housing Subsidies. Approval of density bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing.
7. Optional Density Bonuses. Nothing in this section shall be construed to prohibit the city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.
8. Lesser Percentage of Density Bonus. If elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density, is permissible.

F. Incentive standards.

A development eligible for incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) may receive incentives or concessions as provided in Subsections (F)(1) (On-Menu Incentives) or (F)(2) (Off-Menu Incentives).

1. On-Menu Incentives.

The City Council has determined that the On-Menu Incentives listed below would not have a specific, adverse impact.

- a. Lot Coverage. Up to 20 percent increase in lot coverage limits.
- b. Lot Width. Up to 20 percent decrease from a lot width requirement.
- c. Floor Area Ratio. A percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35 percent.
- d. Height. In any zone in which the height or number of stories is limited, a maximum of 11 additional feet or one additional story may be added to the underlying base height.
- e. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
- f. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines “O,” and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

2. Off-Menu Incentives. An applicant may request an incentive not included in Subsection (F)(1) (On-Menu Incentives), so long as such incentive meets the definition under state law. The review authority will determine whether any such requested Off-Menu Incentive may have a specific, adverse impact.
3. Denial of Requested Incentive.

The reviewing authority may deny a request for an incentive only if it makes a written finding, based on substantial evidence, of any of the following:

- a. The concession or incentive does not result in identifiable and actual cost reductions, consistent with the definition of “concession” or “incentive”, to provide for affordable housing costs, as defined in Health & Safety Section 50052.5, or for rents for the targeted units to be set as specified in Subsection (I).
- b. The concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households
- c. The concession or incentive would be contrary to state or federal law.

G. Parking Ratio Alteration Standards.

1. General Parking Requirement. Developments eligible for density bonuses and/or incentives as provided in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) must comply with the applicable parking provisions of Chapter 14.74 (Off-Street Parking and Loading), unless the development qualifies for a parking ratio alteration as provided in Subsections (G)(2) (On-Menu Parking Ratio Alterations) or (G)(3) (Off-Menu Parking Ratio Alterations).
2. On-Menu Parking Ratio Alterations.
 - a. For Any Development Eligible for a Density Bonus. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, of a development, that exceeds the following ratios:
 - i. For zero to one bedroom, one onsite parking space.
 - ii. For two to three bedrooms, two onsite parking spaces.
 - iii. For four and more bedrooms, two and one-half parking spaces.
 - b. For Low or Very Low Income Housing near Major Transit Stop. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedrooms if:

- i. The development includes the maximum percentage of low or very Low Income units; and
 - ii. The development is located within one-half mile from a major transit stop; and
 - iii. There is unobstructed access to the major transit stop from the development.
 - c. For Senior Housing Developments with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 parking spaces per bedrooms if:
 - i. The development is a Senior Housing Development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, at affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - d. Special Needs Housing Development with Only Rentals and Transportation. Upon the request of the developer, the City shall not impose a parking ratio, inclusive of handicapped and guest parking, that exceeds 0.3 parking spaces per bedrooms if:
 - i. The development is a special needs housing development; and
 - ii. The development consists solely of rental units, excluding a manager's unit or units, an affordable housing cost to low income families; and
 - iii. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - e. No Change to Incentive Count. A request pursuant to these On-Menu Parking Ratio Alterations shall neither reduce nor increase the number of incentives to which the applicant is entitled pursuant to Subsections (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).
3. Off-Menu Parking Ratio Alterations. An applicant may request parking ratio alterations beyond those provided in Subsection (G)(2) (On-Menu Parking Ratio Alterations) as an incentive pursuant to (C) (Development Eligibility, Bonus Densities, and Incentive Counts) or (F) (Incentives/Concessions Standards).
 4. Optional Parking Ratio Alterations. This Section does not preclude the City from reducing or eliminating a parking ratio requirement for development projects of any type in any location.

5. Provision of Parking. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a development may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.
6. Parking Study. Notwithstanding the parking ratio alterations available in Subsections (G)(2) (On-Menu Parking Ratio Alterations) and (G)(3) (Off-Menu Parking Ratio Alterations), the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven years from the date of the application described in Subsection (D)(1) (Application), then the City may impose a higher parking ratio not to exceed the ratio described in Subsection (G)(2)(a) (For Any Development), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low and very low income individuals, including seniors and special needs individuals. The City shall pay the costs of any new study. The City shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

H. Waiver standards.

1. Waivers or Reduction. An applicant may apply for a waiver or reduction of development standards that will have the effect of physically precluding the construction of a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) at the densities or with the concessions or incentives permitted under this Section, and may request a meeting with the City to discuss the proposed waiver or reduction.
2. No Change in Other Incentives. A proposal for the waiver or reduction of development standards described in Subsection A shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this Section.
3. Denial of Requested Waiver.

The reviewing authority may deny a request for a waiver under this Section if it finds the waiver would:

- a. Waive or reduce a development standard that would not have the effect of physically precluding the construction of a development meeting the criteria of this Section at the densities or with the incentives permitted under this Section; or
- b. Have a specific, adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or

- c. Have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
- d. Be contrary to state or federal law.

I. Covenants.

1. Covenant Required. Prior to issuance of a building permit for a development identified in Subsection (C) (Development Eligibility, Bonus Densities, and Incentive Counts) that qualified for a density bonus, incentive, and/or parking alteration, the developer must record a restrictive covenant against the development as provided in Subsection (I)(2) (Covenants for Specific Developments).
2. Covenants for Specific Developments.
 - a. For Rental Developments for Low or Very Low Income Households. For a development that contains rental housing for low or very low income households, a covenant acceptable to the City shall be recorded with the Santa Clara County Recorder, guaranteeing that the affordability criteria will be observed for at least 55 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.
 - b. For For-Sale Developments for Very Low, Low, and Moderate Income Households. For a for-sale development that contains housing for initial occupants of very low, low, and/or moderate incomes, an equity sharing agreement acceptable to the City and consistent with the for-sale requirements of California Government Code Section 65915(c)(2) shall be recorded with the Santa Clara County Recorder.
3. Private Right of Action. Any covenant described in this Section must provide for a private right of enforcement by the City, any tenant, or owner of any building to which a covenant and agreement applies.
4. Conflict of Durations. If the duration of affordability covenants provided for in this section conflicts with the duration for any other government requirement, the longest duration shall control.

J. State regulations.

All other provisions of California Government Code Sections 65915 to 65918, and any amendments thereto, not specified herein are incorporated by reference into this Section.

**MINUTES OF A REGULAR MEETING OF THE PLANNING AND
TRANSPORTATION COMMISSION OF THE CITY OF LOS ALTOS, HELD ON
THURSDAY, JUNE 1, 2017 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL,
ONE NORTH SAN ANTONIO ROAD, LOS ALTOS,
CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Chair Meadows, Vice-Chair Bressack, Commissioners Bodner, Enander, Oreizy,
and Samek

ABSENT: Commissioner McTighe

STAFF: Community Development Director Biggs and PlanninG Services Manager
Kornfield

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. Planning and Transportation Commission Minutes

Approve the minutes of the May 18, 2017 Regular Meeting.

Action: Upon motion by Commissioner Oreizy, seconded by Commissioner Enander, the Commission approved the minutes of the May 18, 2017 Regular Meeting as written. The motion was approved by the following vote: AYES: Enander, Bodner, Meadows, Oreizy and Samek; NOES: None; ABSTAIN: Bressack; ABSENT: McTighe. (5-0-1)

PUBLIC HEARING

2. Density Bonus

Proposed Density Bonus Regulations that establish the procedures for implementing the State of California's Density Bonus requirements for the production of affordable housing and achieve consistency with the City's goals, policies and programs for the provision of housing. *Project Manager: Biggs* ***THIS ITEM WAS CONTINUED FROM THE MAY 18, 2017 PLANNING AND TRANSPORTATION COMMISSION MEETING***

Community Development Director Biggs presented the staff report.

Public Comment

Mircea gave his support for the density bonus regulations and suggested alterations to parking requirements, including incentives for products like for Zipcar.

Emily Walther stated she was seeking clarification on the distinction between the incentives and waivers concept, that the City should define the cost and value to the developer, landscape reduction should not infringe on a required landscape buffer, and to consider the CT and Density Bonus codes together.

David Walther stated he is pro community and housing, but recommended keeping the height limit at 45 feet for the CT District, list the waivers and incentives with an application, and encouraged the Commission to follow the Circulation Element of the General Plan.

Fred Haubensak spoke as the president of the Los Altos Square Homeowner's Association stating that 220 residents support maintaining well defined maximum limits and Below Market Rate (BMR) Housing. He said that the proposed Density Bonus regulations are a win-win with expanded limits and developer clarity, but recommended keeping the height limit at a maximum of 45 feet.

Lili Najimi suggested limiting incentives on height when sites border an R1 zone and keeping the 45-foot limit in the CT zone with no exceptions.

Marianne Baldrice stated her support for housing and affordable housing, and noted the need for safe bike lanes, wide sidewalks and parking, but recommended limiting the height of buildings.

Darren Jones said not to reduce parking because people have cars that must be parked.

Anatol Shmelev stated that the landscape screening in the buffers is not enforced, Jordan Avenue gets cut through traffic, and more development equals more problems.

The Commission discussed the project and offered the following comments:

- Commissioner Enander:
 - Would like to see the submittal requirements for a density bonus, including drawings for a code compliant building before the application of the density bonus;
 - Lesser of one-story or 11 feet;
 - Height incentives should not include the permitted general zoning exceptions in the Code (e.g., elevators);
 - Mechanical parking means should not be used for accessible and visitor parking spaces;
 - Use consistent terms for affordable housing for these types of projects as outlined in the State law; and
 - Clarify those sections of the proposed Code where the City could exercise its discretion and those sections that were required by State legislation.
- Commissioner Samek:
 - Supports incentives, but questioned need to include reduced setbacks in the list of incentives; and
 - Setback incentives (reduced setbacks) create impacts.
- Vice-Chair Bressack:
 - Should draft this regulation to encourage maintenance of community values;
 - Be careful about reducing parking requirements with increased density;
 - Seek alternative transportation methods that promote community values;
 - Parking studies should be based in industry standards;
 - Evaluate whether Green buildings standards can be incentivized in some manner in the incentives section; and
 - Require periodic review of the ordinance.
- Commissioner Oreizy:
 - Review at the open space provisions;
 - Explore at ways to reduce impacts to the R1 district;

- Do not give excessive parking waivers; and
- Off-menu incentives need to be identified in an application.
- Commissioner Bodner:
 - Need to review periodically to improve applicability and optimize the intent of the code;
 - Do not allow reductions in the required landscape buffers;
 - Alternative transportation options should be dedicated to project reductions and do not allow credit for Zipcars parking spaces that may benefit outside the project; and
 - Do not consider height changes to evade the state intent of the density bonus law (i.e., do not lower the height limit only to grant what was previously allowed with a density bonus incentive).
- Chair Meadows:
 - Each incentive should only be allowed once;
 - Supports creative parking incentives; and
 - Asked that the Density Bonus code come back with the CT Zoning Code.

INFORMATIONAL ITEM

3. 40 Main Street

Proposed three-story commercial office building. An informational presentation on the proposed project, environmental analysis, and proposed mitigated negative declaration. No action by the Planning and Transportation Commission on the project or its related applications will be taken.

Project Manager: Biggs

Community Development Director Biggs summarized the project and environmental review.

Project representative Bill Maston spoke about the Mitigated Negative Declaration and parking study, showed a 3D renderings presentation of the project, and talked about the benefit of providing a paseo.

Commissioner Bodner stressed that City needs to achieve a consistent parking analysis for projects in the Downtown.

Commissioner Enander asked for clarification about the parking code and the parking study, asked about the impervious area on the site, clarification on the site area, need to address view impacts, if parking for 170 State Street had been accounted for, and to the public/private portions of parking plaza 9.

Public Comment

Resident Jon Baer stated his opposition to the project and said that Commissioner Bodner was a conflicted advocate on parking requirements. He said that the parking plaza is for the first story only and not to support additional development using supposed underused parking spaces; the paseo serves very little function in the immediate context; that office parking goes to office buildings, not downtown in general; and the incentives requested are not supported by the public benefit provided.

Vice-Chair Bressack noted she did not see a conflict of interest on the part of any Commissioner and was confident they could all evaluate the project objectively.

Commissioner Bodner noted that she did not own any property Downtown or nearby Downtown and that her former service on the former City-wide Parking Committee did not pose a conflict and that she is an advocate for the City of Los Altos and its Downtown.

Chair Meadows stated that she did not see anything except generic issues that could affect any project and the mitigation measures of the Mitigated Negative Declaration (MND) seemed to satisfy and address those issues.

When Commissioner Enander asked why the MND was developed for this project, Community Development Director Biggs replied that it was appropriate given the record on a very similar project at this site.

COMMISSIONERS' REPORTS AND COMMENTS

Community Development Director Biggs reported on the May 23, 2017 City Council meeting regarding the Accessory Dwelling Unit (ADU) Ordinance, Council is looking at the accessory structures regulations, and continued the item for 4880 El Camino Real to a later date.

POTENTIAL FUTURE AGENDA ITEMS

None.

ADJOURNMENT

Chair Meadows adjourned the meeting at 9:21 P.M.

David Kornfield
Advance Planning Services Manager

**MINUTES OF A REGULAR MEETING OF THE PLANNING AND
TRANSPORTATION COMMISSION OF THE CITY OF LOS ALTOS, HELD ON
THURSDAY, AUGUST 3, 2017 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL,
ONE NORTH SAN ANTONIO ROAD, LOS ALTOS,
CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Chair Meadows, Vice-Chair Bressack, Commissioners Bodner, Enander, and Samek

ABSENT: Commissioners McTighe and Oreizy

STAFF: Community Development Director Biggs and Advance Planning Services Manager Kornfield

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Kate Coghlan, who represents public artist Lucian Nan, spoke to the Commission regarding calls for public art projects.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. Planning and Transportation Commission Minutes

Approve the minutes of the July 20, 2017 Regular Meeting.

Action: Upon motion by Commissioner Enander, seconded by Commissioner Bodner, the Commission approved the minutes of the July 20, 2017 Regular Meeting as amended by Commissioners Bodner, Meadows and Samek. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe and Oreizy. (5-0)

PUBLIC HEARING

2. 17-CA-01 – Amendments to the CT Zone District – El Camino Real Corridor

Proposed Amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District, of the Los Altos Municipal Code that reflect modified height limits, setback requirements, open space requirements, standards for mechanical parking systems, standards for on-site areas to accommodate delivery, service, and refuse vehicles, and standards for rooftop uses, among other standards. The Planning and Transportation Commission will review the proposed amendments and develop a recommendation to the City Council. *Project Manager: Biggs*

3. Density Bonus

Proposed Density Bonus Regulations that establish the procedures for implementing the State of California's Density Bonus requirements for the production of affordable housing and achieve consistency with the City's goals, policies and programs for the provision of housing. *Project Manager: Biggs*

Community Development Director Biggs presented the staff report recommending the Commission support adoption of the proposed amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District and the Density Bonus Regulations to the City Council.

Public Comment

Los Altos Square resident Fred Haubensak promoted a petition circulating against the height increase and said that the absolute maximum height should be kept at 45 feet.

Resident Lili Najimi read her letter dated August 3, 2017, and said that the 45-foot maximum height should include the density bonus incentive, create open space, and provide pedestrian and bicycle elements.

Los Altos property owner Mircea stated that parking is not identified as an incentive, but permitted by code, and limiting incentives is against California State law.

Resident Jennifer Sheppard stated her opposition to any height increase at Village Court and that there is too much traffic already.

Resident JoAnn Kilner stated that traffic is already bad and is going to get worse, that the maximum height should be 45 feet, and that more housing equals more traffic.

Resident Suzanne Bayley stated that the absolute maximum height should be 45 feet.

Resident Darren Jones stated that the last height increase in the CT District was for affordable housing, and the Density Bonus Regulations will allow a doubling of the height.

Resident Mary Skougaard stated she has spent the last 40 years fighting for responsible development along the El Camino Real that has no buffer between the R1 Residential District.

Resident Mariel Stoops stated her opposition to a height increase.

Resident Roberta Phillips stated that height increases and the density bonus code is not producing much affordable housing and the City needs to do something else.

Resident Feraydoon Jamzadeh stated that the height should be set at 35 feet, but only allow 45 feet if Below Market Rate (BMR) housing is included in the project.

Josh Barousse with Silicon Valley At Home stated that the City of Los Altos is not meeting its housing needs (BMRs), collecting housing fees, and it should prioritize Below Market Rate (BMR) housing on the El Camino Real.

Local realtor Bryan Robertson stated there is a need for higher density on El Camino Real and warned the state will take over housing regulations and to reconsider the menu of incentives.

Los Altos Square resident Ellen J. Baron stated there is no need for incentives, taller ceiling heights, or BMR housing.

Resident Bill Moniz questioned the state's control, said BMRs are ridiculous, stated the City should fight the state, and BMRs should not drive pricing.

Resident Anatol Shmelev stated not to give developers anything and to keep the maximum height to 45 feet.

Los Altos Square resident Siyuan Xin stated her concerns about increased density and increased parking and said that the City of Los Altos should listen to the residents.

Resident Eric Hwang stated his concerns about traffic increases, safety, and the direction the City of Los Altos is going in.

Resident Jon Baer stated “the road to hell is paved by good intentions”, that the height increase was for the good (housing/height creep), the projects are not what we expect or want, and asked how do we get what we want and protect those adjacent to the CT Zone District.

The Commission discussed the proposed amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District and the Density Bonus Regulations and offered the following comments:

- Commissioner Bodner:
 - Questions the State letter;
 - The City must allow four stories to be consistent with our Housing Element;
 - We need counsel (City Attorney) assistance/advice on this; and
 - We need affordable housing to provide for all people in town (e.g. service workers).
- Commissioner Enander:
 - Code was not intended for four stories;
 - Questions State letter; and
 - City should consider better housing options.
 - Should set aside height issues and discuss the rest;
 - Can we do what the community wants and lower heights on El Camino Real; and
 - Making residential a “permitted” use encourages housing.
- Chair Meadows:
 - Noted City Attorney advice is needed on the State’s letter;
 - Need housing for all; and
 - We need to look at housing in-lieu fees as well.
- Commissioner Samek:
 - Continue the items to allow for City Attorney input.
- Vice-Chair Bressack:
 - Agreed that the City Attorney needs to review the State’s letter and be present at the next meeting.

Action: Upon motion by Vice-Chair Bressack, seconded by Commissioner Enander, the Commission continued agenda items 2 and 3 to the August 17, 2017 Planning and Transportation Commission meeting with the following direction:

- Have the City Attorney review the letter from the State;
- Have City Attorney present at the Planning and Transportation Commission meeting;
- Evaluate if Los Altos can do what the community wants to do by lowering the height along the El Camino Real corridor;
- Show the intent of the City of Los Altos to meet the State’s goals; and
- Evaluate if listing housing as a permitted use instead of a conditionally permitted use demonstrated the City’s efforts to provide affordable housing.

The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe and Oreizy. (5-0)

COMMISSIONERS' REPORTS AND COMMENTS

Commissioners reported.

POTENTIAL FUTURE AGENDA ITEMS

Commissioner Enander asked about the possibility of staff bringing the housing in-lieu fees to the next Planning and Transportation Commission meeting. Community Development Director Biggs responded that the City Attorney needed to evaluate and review the ordinance more before bringing it forward to the Commission.

ADJOURNMENT

Chair Meadows adjourned the meeting at 8:34 P.M.

Jon Biggs
Community Development Director

**MINUTES OF A REGULAR MEETING OF THE PLANNING AND
TRANSPORTATION COMMISSION OF THE CITY OF LOS ALTOS, HELD ON
THURSDAY, AUGUST 17, 2017 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL,
ONE NORTH SAN ANTONIO ROAD, LOS ALTOS,
CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Chair Meadows, Vice-Chair Bressack, Commissioners Bodner, Enander, Oreizy and Samek (arrived at 7:05 pm)

ABSENT: Commissioners McTighe

STAFF: Community Development Director Biggs, Advance Planning Services Manager Kornfield, Current Planning Services Manager Dahl and Assistant City Attorney Wisinski

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Randy Krieg, representing the Bicycle and Pedestrian Advisory Commission (BPAC), made himself available for questions.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. **Planning and Transportation Commission Minutes**
Approve the minutes of the August 3, 2017 Regular Meeting.

Action: Upon motion by Commissioner Enander, seconded by Vice-Chair Bressack, the Commission approved the minutes of the August 3, 2017 Regular Meeting as written. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, and Samek; NOES: None; ABSTAIN: Oreizy; ABSENT: McTighe. (4-0-1)

Commissioner Samek arrived at the meeting.

Chair Meadows motioned to moves agenda item #6, up to be heard as item #3. The rest of the Commission concurred. (6-0)

PUBLIC HEARING

2. **17-D-01 and 17-SD-01 – Chapman Design Associates – 517 Tyndall Street**
Design Review and Tentative Subdivision Map for three, multiple-family, residential townhouse condominiums with at-grade parking. *Project Planner: Gallegos*

Current Planning Services Manager Dahl presented the staff report for Associate Planner Gallegos, recommending that the City Council approve design review and subdivision applications 17-D-01 and 17-SD-01 subject to the recommended findings and conditions.

Commissioner Enander commended Associate Planner Gallegos' findings in the staff report.

Project architect/applicant Walter Chapman gave a project overview, describing the changes to the roof forms and style to a more traditional design.

Chair Meadows commended the applicant on his response to the Commissions' concerns and input.

Public Comment

None.

Action: Upon motion by Commissioner Enander, seconded by Vice-Chair Bressack, the Commission recommended approval to the City Council of design review and subdivision applications 17-D-01 and 17-SD-01 per the staff report findings and conditions, with the following additional condition.

- Colors approved per the material board presented at the meeting.

The motion was approved by the following vote: AYES: Bressack, Bodner, Enander, Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

3. 17-UP-01 – J. Morris – 400 Main Street

Review of a Staff interpretation that the conditional uses listed at Los Altos Municipal Code Section 14.48.040 are allowed in the existing vacant ground floor interior lease spaces of building with approval of a conditional use permit because they would not displace an existing retail business and consideration of a conditional use permit that would allow any of the following uses within these same lease spaces: office-administrative; personal services; business or professional trade schools; cocktail lounges (wine bars); commercial recreation; medical or dental clinics; and other uses determined by the Planning Commission to be of the same general character. *Project Manager: Biggs*

Community Development Director Biggs presented the staff report recommending the Commission agree with its interpretation that since the vacant lease area has never been occupied by a retail business, a use permit can be appropriately considered and staff recommends approval of that use permit subject to the staff report findings and conditions.

Property owner/developer Jeff Morris spoke to the difficulties he has had leasing the retail space; stated that Pharmaca will be leaving soon; the retail market is not strong in Los Altos; and listed many tenants that sought the space but the use was unpermitted.

Local realtor and agent leasing the space James Randolph spoke to the difficulty of retail and leasing the subject building, that on-line sales are affecting retail, and services uses are doing alright.

Public Comment

Los Altos resident and realtor Ron Labetich stated that Pharmaca needed more feet on the street and to keep an open mind of future uses.

The Commission discussed the code interpretation and use permit and provided the following input:

- Commissioner Bodner:
 - Are we setting a precedence?
 - If the intention of the code is retail, why allow a one-off decision for the newest building downtown?; and
 - Wants connectivity of uses.

- Commissioner Enander:
 - Concerned about the City not looking at the whole issue – Downtown Vision.
- Vice-Chair Bressack:
 - Could support, but does not want three nail salons;
 - We could exclude office use;
 - Agrees with staff's approach if the Commission can narrow the list of uses and then use this example to inform the Downtown Vision process; and
 - She could support banks/financial institutions and salons (not nail).
- Commissioner Oreizy:
 - Office use does not seem right for the location on the ground floor.
- Chair Meadows:
 - Why not use the use permit process for discretion and see, since there is a good history of good downtown use permits?
- Commissioner Samek:
 - Supports idea of a use permit for other uses, but should change the code (this is not the correct way).

Action: Upon motion by Vice Chair Bressack, seconded by Commissioner Enander, the Commission voted to:

1. Concur with staff's interpretation that because the subject space had been vacant since completion of the building in 2014, a retail business was not being displaced and a use permit for uses other than retail or restaurant could be considered; and
2. Approve a conditional use permit allowing a barber shop or hair salon, cocktail lounge or wine bar, fitness studio, or other use of the same general character with approval by the Planning and Transportation Commission.

In addition to the conditions recommended by staff, the Commission included the following condition:

- This use permit is granted to the first business(es) to occupy the vacant space(s). Subsequent business uses must comply with zoning code requirements in place at that point in the future.

The motion was approved by the following vote: AYES: Bressack, Bodner, Enander, Meadows, and Oreizy; NOES: Samek; ABSTAIN: None; ABSENT: McTighe. (5-1)

4. **Density Bonus**

Proposed Density Bonus Regulations that establish the procedures for implementing the State of California's Density Bonus requirements for the production of affordable housing and achieve consistency with the City's goals, policies and programs for the provision of housing. *Project Manager: Biggs*

Community Development Director Biggs presented the staff report recommending the Commission support adoption of the proposed amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District and the Density Bonus Regulations to the City Council. He recapped the purpose of the meeting, cautioned against lowering the height in the CT zoning district, said that the City Attorney recommends not limiting the menu for Density Bonus, and that staff is still exploring housing impact fees/in-lieu fees for Below Market Rate (BMR) housing.

Assistant City Attorney Wisinski outlined the Density Bonus statutes.

Public Comment

Los Altos Square resident Fred Haubensak said to retain the 45-foot maximum height limit with no exceptions, that we need the City Attorney's input to lower height and raise density bonus, more height does not equal more BMR units, and affirm the maximum density is 38 dwelling units/acre.

Los Altos property owner Mircea applauded staff's effort to update the ordinance, that the City needs to abide by California State law, do not limit incentives, cost reductions could be parking reductions, but it would devalue the units.

Mircea's attorney, Wilson Wendt, referred to his letter, complimented the City Attorney, and stated his support for staff's amended CT Zone and Density Bonus ordinances.

Resident Lili Najimi said that City needs to protect the R1 residents that back up to the CT zone district, that 45 feet should be the maximum height, there should be wider sidewalks, and privacy hedges need to be enforced.

Resident Mary Skougaard stated that density bonus should not be allowed next to half acre lots in the R1 Residential District, the City needs to publish new zoning maps to correct the zoning oversight of Village Court.

Assistant City Attorney Wisinski took the Commission through the new Density Bonus ordinance and the preferred incentives menu.

Action: Upon motion by Commissioner Enander, seconded by Vice-Chair Bressack, the Commission recommended approval of the Density Bonus Regulations to the City Council per the staff report recommended changes. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander, Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

Action: Upon motion by Commissioner Bodner, seconded by Vice-Chair Bressack, the Commission continued agenda items #5 and #6 to the September 7, 2017 Planning and Transportation Commission meeting. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander, Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

5. Loyola Corners Update

Recommendation to the City Council for an Update to the Loyola Corners Specific Plan and adoption of a Negative Declaration of Environmental Impact. *Project Planner: Kornfield* ***THIS ITEM HAS BEEN CONTINUED TO THE SEPTEMBER 7, 2017 PTC MEETING***

INFORMATIONAL

6. Hillview Community Center Task Force

Receive an update from the Hillview Community Center Task Force. *Project Manager: J Logan* ***THIS ITEM HAS BEEN CONTINUED TO THE SEPTEMBER 7, 2017 PTC MEETING***

7. **17-CA-01 – Amendments to the CT Zone District – El Camino Real Corridor**

Proposed Amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District, of the Los Altos Municipal Code that reflect modified height limits, setback requirements, open space requirements, standards for mechanical parking systems, standards for on-site areas to accommodate delivery, service, and refuse vehicles, and standards for rooftop uses, among other standards. The Planning and Transportation Commission will review the proposed amendments and develop a recommendation to the City Council. *Project Manager: Biggs*

The Commission discussed the proposed amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District and offered the following comments:

- Commissioner Enander:
 - Suggested one height for pure R3 zoning and another for mixed-use or commercial;
 - Wants to keep the maximum height at 45 feet even with the Density Bonus; and
 - Provide and maintain landscape buffers to protect the R1 district.
- Commissioner Bodner:
 - Why go backward to go forward?;
 - If the 2010 changes to the CT Zone District did not result in more BMR units, going down to 30 feet does not get us more BMR units; and
 - The housing crisis has increased.
- Chair Meadows:
 - Stick to the 45-foot height limit and keep the General Plan conformance; and
 - Reiterated the State's Department of Housing and Community Development letter with a four-story baseline to be consistent with the Housing Element.
- Commissioner Oreizy:
 - Keep the existing code and protect the R1 zone.
- Commissioner Samek:
 - Keep more housing as a conditional use permit, then only allow higher density for pure R3 zones.
- Vice-Chair Bressack:
 - The intent of the 45-foot limit was to provide built-in affordable housing; and
 - We have an ethical obligation to put housing on El Camino Real.

Resident Jeremy Macaluso said to go by Robert's Rules and set zoning to limit luxury housing if that is what we want to do (lower heights and less open space).

Resident Janaki Tenneti stated that a lower baseline reduces height and housing along El Camino Real should not take precedent over protection of R1 zoned neighborhoods.

Resident Emily Walther said to lower the base height to accommodate the Density Bonus increase.

Los Altos property owner Mircea stated that to be consistent with 4880 El Camino Real the height limit should be 47 feet with and 11-foot density bonus to equal a total height of 58 feet, that residential needs to be allowed on El Camino Real, retail goals along El Camino Real are outdated, and we don't need to be Mountain View, but we do need to meet the Grand Boulevard initiatives.

Action: Upon motion by Vice-Chair Bressack, seconded by Commissioner Oreizy, the Commission recommended approval of the amendments to Chapter 14.50, CT Commercial Thoroughfare Zone District to the City Council per the staff report recommended changes and the following modifications by Commissioner Enander:

- Uses per PTC/CC approval;
- To clarify and publish the Village Court underlying zoning including the R1 district parcel, with the CT district and PUD overlay; and
- City Council needs to recognize the height needed for increased density to encourage the development of affordable housing.

The motion was approved by the following vote: AYES: Bressack, Bodner, Meadows, and Oreizy; NOES: Enander and Samek; ABSTAIN: None; ABSENT: McTighe. (4-2)

COMMISSIONERS' REPORTS AND COMMENTS

Commissioner Oreizy reported on the June 27, 2017 City Council meeting regarding accessory structures, vis-à-vis Accessory Dwelling Units. Chair Meadows noted that she would be out for both meetings in October.

POTENTIAL FUTURE AGENDA ITEMS

Vice-Chair Bressack asked about when the In-lieu Fees for affordable housing will come back to the Commission. Community Development Director Biggs stated that staff is working on it.

ADJOURNMENT

Chair Meadows adjourned the meeting at 11:39 P.M.

Jon Biggs
Community Development Director

DENSITY BONUS APPLICATION SUPPLEMENT

CITY OF LOS ALTOS

A housing development including five or more residential units may propose a density bonus in accordance with California Government Code Section 65915 et seq. ("Density Bonus Law").

Any applicant requesting a density bonus and any incentive(s), waiver(s), or parking reductions provided by State Density Bonus Law shall submit a Density Bonus Report as described below concurrently with the filing of the planning application for the first discretionary permit required for the housing development. The requests contained in the Density Bonus Report shall be processed concurrently with the planning application.

The Density Bonus Report shall include the following minimum information:

I. **Requested Density Bonus:**

- a. Summary table showing: 1) The maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units; 2) The proposed number of affordable units by income level; 3) The proposed bonus percentage; 4) The number of density bonus units proposed; 5) The total number of dwelling units proposed on the site; and 6) The resulting density in units per acre.
- b. On the required tentative map and/or preliminary site plan show the number and location of all proposed units and designate the location of the proposed affordable units and density bonus units.
- c. The zoning and general plan designations and assessor's parcel number(s) of the housing development site.
- d. Calculation of the maximum number of dwelling units permitted by the City's zoning ordinance and general plan for the housing development, excluding any density bonus units.
- e. Number of bedrooms in the proposed market-rate units and the proposed affordable units.
- f. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying dwelling units when the site contained the maximum number of dwelling units, if known.
- g. Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.
- h. If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and evidence that each of the requirements included in Government Code Section 65915(g) can be met.

II. **Requested Incentive(s) and Concessions:** In the event an application proposes incentives or concessions pursuant to State Density Bonus Law, to ensure that each incentive contributes significantly to the economic feasibility of the proposed affordable housing, the Density Bonus Report shall include the following minimum information for each incentive or concession requested:

- a. The City's usual development standard and the requested development standard or regulatory incentive.

- b. Except where mixed-use zoning is proposed as an incentive, provide a project financial report demonstrating that each requested incentive(s) or concession(s) will result in identifiable, financially sufficient, and actual cost reductions to the housing development and that they are required to provide for affordable rents or affordable housing costs, as applicable.
 - c. If approval of mixed-use zoning is proposed as an incentive, provide evidence that nonresidential land uses will reduce the cost of the housing development, that the nonresidential land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located, and that mixed use zoning is required in order to provide for affordable rents or affordable sales prices.
- III. **Requested Waiver(s):** In the event an application proposes waivers of development standards pursuant to State Density Bonus Law, the Density Bonus Report shall include the following minimum information for each waiver requested:
- a. The development standard per City Code and the requested waiver or revised development standard.
 - b. Evidence that each development standard for which a waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus units and incentives the applicant is entitled to.
- IV. **Requested Parking Reduction:** In the event an application proposes a parking reduction pursuant to Government Code Section 65915(p), a table showing parking required by the zoning ordinance and parking proposed under Section 65915(p). If a parking reduction is proposed under the provisions of Section 65915(p)(2) or (p)(3), evidence that the project qualifies for the additional parking reduction.
- V. **Child Care Facility:** If a density bonus or incentive is requested for a child care facility, evidence that all of the requirements included in Government Code Section 65915(h) can be met.
- VI. **Condominium Conversion:** If a density bonus or incentive is requested for a condominium conversion, evidence that all of the requirements included in Government Code Section 65915.5 can be met.
- VII. **Other:** Any additional information requested by the City to establish that the project is eligible for a density bonus, incentive, waiver, or parking reduction.
- VIII. **Fee:** Payment of any fee in an amount set by resolution of the City Council for staff or consultant time necessary to determine compliance of the Density Bonus Plan with State Density Bonus Law.

Jon Biggs

From: Nancy Troche <nancy.troche@msrlegal.com>
Sent: Thursday, August 17, 2017 10:24 AM
To: Jon Maginot; Jon Biggs
Cc: 'paul.mcdougall@hcd.ca.gov'; 'pcampos@biabayarea.org'; 'christopher.diaz@bbklaw.com'; 'katy.wisinski@bbklaw.com'; Administration; Chris Jordan
Subject: Communication for August 17 Planning and Transportation Commission Meeting [IWOV-iManage.FID948053]
Attachments: Jon Maginot and Jon Biggs.pdf; Honorable Chair Meadows and Members of the Commission.pdf

This email is sent at the request of Wilson F. Wendt. Any replies may be directed to wilson.wendt@msrlegal.com.

Nancy Troche | Miller Starr Regalia

Legal Assistant to Wilson F. Wendt
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MILLER STARR REGALIA CONFIDENTIAL COMMUNICATION

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August 17, 2017

VIA E-MAIL

Jon Maginot
City Clerk
City of Los Altos
City Hall
1 North San Antonio Road
Los Altos, CA

Jon Biggs
Planning Director
City of Los Altos
City Hall
1 North San Antonio Road
Los Altos, CA

Re: Communication for August 17 Planning and Transportation
Commission Meeting

Gentlemen:

On behalf of our client, Luxone LLC, we are transmitting a letter directed to the Planning and Transportation Commission which I request that you deliver to the Commissioners this evening. We apologize for the late hour delivery but we only received copies of the proposed Density Bonus Ordinance on Monday. We will be at the meeting this evening and bring additional copies if necessary.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

Wilson F. Wendt

WFW:nmt

Encl.

cc: Client



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August 17, 2017

VIA EMAIL

Chairperson Sally Meadows
Members of the Planning and
Transportation Commission
City of Los Altos
Los Altos City Hall
1 North San Antonio Road
Los Altos, CA 94022

Re: August 17, 2017 Agenda; CT Zoning Code Amendments and Density Bonus
Regulations Amendment; Comments of Luxone, LLC, Applicants for Project
Approval at 4856 and 4846 El Camino Real, Los Altos, CA

Honorable Chair Meadows and Members of the Commission:

Our office represents Luxone, LLC, the owners and applicants for development approval for an affordable housing project at 4856 and 4846 El Camino Real in the area designated in the Los Altos General Plan ("General Plan") as the El Camino Real Corridor Special Planning Area. Our clients' project is a five story residential development immediately adjacent to an almost identical project approved at 4880 El Camino Real in September 2016. Shortly after that approval, our clients filed their application for a similar building which resulted in the City adopting a moratorium on approvals pursuant to Government Code Section 65858 until issues relating to the underlying zoning of the property could be considered and addressed, thus we are before you this evening. That moratorium was extended twice and now extends until November 15, 2017, at which time there will be no additional extensions legally possible. Our clients hope at that time that the entitlements for their project can be considered and approved.

In the context that our clients' project caused the zoning update analysis and because our clients' project will propose affordable units and seek a density bonus and certain concessions, incentives or waivers, we submit these comments for your consideration:

A. Density Bonus Regulations, Section 14.28.040 of the Los Altos Municipal Code:

This section, the Density Bonus Ordinance, is required by provisions in state law adopted at the last legislative session. Cities are now required to implement the provisions of Government Code Section 65915 ("State Density Bonus Law") which provides for density bonuses, incentives and concessions, waivers and parking ratio credits. We reviewed the initial draft Density Bonus Ordinance prepared for the City and had significant comments, which were included in materials given to the planning director and introduced into the record for this ordinance. Monday, we were afforded copies of the revised Density Bonus Ordinance which is much closer to consistency with the requirements of state law. However, we have the following comments and requests for changes in the draft density bonus ordinance revision:

(1) In subsection D1(f) there remains a reference to "physical preclusion waivers". This definition does not apply in the state density bonus law and was removed from the list of definitions in subsection B. The words "physical preclusion" should be deleted here.

(2) The draft Density Bonus Ordinance still contains the concept of on-menu/off-menu incentives. We don't believe this is allowed under the State Density Bonus Law. Any requested incentive must be approved by the City unless the City makes a written finding, based upon substantial evidence that (a) the concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or (b) the concession or incentive would have a specific, adverse impact upon public health and safety or the physical environment which cannot be mitigated. The draft Density Bonus Ordinance contains a statement that as to on-menu incentives, the City Council has determined such incentives would not have a specific adverse impact. This implies that an off-menu incentive might have a significant impact and that the burden of proof is on the applicant to submit evidence indicating that it does not. To the contrary, the state density bonus law provides that "the City . . . shall bear the burden of proof for the denial of a requested concession or incentive." Thus as to any requested concession or incentive, the burden of proof is upon the City to present substantial evidence showing that a significant impact which cannot be mitigated occurs.

(3) There is inconsistency between the provisions of State Density Bonus Law, the draft Density Bonus Ordinance and the provisions of Los Altos Municipal Code Section 14.28.030. That Municipal Code section, in subsection E, states that in projects containing more than 10 units when one affordable unit is required, at least one affordable unit must be provided at the low income level. This provision is in conflict with Govt. Code Section 65915(b)(2) which provides that an applicant who requests a density bonus shall elect whether the bonus shall be awarded on the basis of the provision of units for lower income households, very low income households, or moderate income households.

Obviously, the choice is with the applicant and the provision requiring at least one unit for low income households should be removed from section 14.28.030.

(4) Additionally, the Density Bonus Report Submittal Requirements handout, apparently prepared by the Planning Commission and disseminated to potential applicants for affordable projects contains a statement that the application for the project must include a project financial report which may be in the form of a proforma demonstrating that each request of an incentive or concession will result in identifiable financially sufficient and actual cost reductions. A proforma cannot be required pursuant to the State Density Bonus Law. The only financial information required is evidence that the requested incentive or concession will result in "identifiable and actual cost reductions...". This dissemination document should be revised by the Planning Department.

B. Proposed CT Zoning Code Amendments:

The CT Commercial Thoroughfare zoning designation is afforded only to property along El Camino Real in the El Camino Real Corridor Special Planning Area. Our clients' property is located virtually in the middle of that swath of CT Zoning and is bordered by R3 zoning in the rear and CT on each side. The City's housing elements of the General Plan was found compliant by the State Department of Housing and Community Development (HCD) in May 2015. That compliance determination was based upon, among other things, an identification in the Housing Element of CT Zoned sites, as housing opportunity sites to accommodate the regional housing needs for lower income households. Policy 4.3 in the Housing Element calls for facilitation of the development of new units of affordable housing and Program 4.3.4 urges the City to meet maximum densities allowed in the various zoning districts. A crucial aspect of such maximizations is the application of the State Density Bonus Law provisions to the CT District.

Additionally, Goal 4 in the General Plan Land Use Element seeks to encourage affordable housing and allow development intensification in the El Camino Real Corridor Planning Area.

HCD has submitted a letter dated July 25, 2017 which urges the City to act consistently with the Housing Element and refrain from adopting lowered height limits or other restrictions that would prevent implementation of affordable housing projects in the CT Zone property. HCD points out that continuing to allow at least four stories on CT Zone sites without the density bonus law, is important to promoting development consistent with the approved Housing Element.

C. Establishment of the Proposed 47 Foot Height Limit as Recommended in the August 3 Staff Report is Important:

In order to allow at least four story residential development, without density bonus, it is important that the recommended 47 foot height limit, in the draft CT amendments and recommended by staff, be applied to the CT zoned property. We

Chairperson Sally Meadows,
Members of the Planning and Transportation Commission
August 17, 2017
Page 4

attach to this letter a copy of the table showing consistency of the Housing Element with other general plan elements and have highlighted those policies that dictate establishment of the 47 foot height limit, without density bonus, to allow appropriate and necessary affordable housing development in the El Camino Real Corridor Special Planning Area.

Conclusion

We appreciate the opportunity to submit these comments and look forward to the opportunity to present our clients' specific project at a later date. We urge the commission to seriously consider and adopt the measures and positions set out in the HCD Letter.

Very truly yours,

MILLER STARR REGALIA

Wilson F. Wendt

Wilson F. Wendt

WFW:gaw/nmt

Enclosure

cc: Client
Paul McDougall, H.C.D. (via email, paul.mcdougall@hcd.ca.gov)
Paul Campos, Esq., B.I.A. (via email, pcampos@biabayarea.org)
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City Manager (via email, cjordan@losaltosca.gov)
City Planning Director (via email, jbiggs@losaltosca.gov)



CONSISTENCY WITH OTHER GENERAL PLAN ELEMENTS

State law requires that the Housing Element contain a statement of “the means by which consistency will be achieved with other general plan elements and community goals” (California Government Code Section 65583[c][6][B]). There are two aspects of this analysis: (1) an identification of other General Plan goals, policies, and programs that could affect implementation of the Housing Element or that could be affected by the implementation of the Housing Element, and (2) an identification of actions to ensure consistency between the Housing Element and affected parts of other General Plan elements. As shown below, the 2002–2020 General Plan contains several elements with policies related to housing, none of which conflict with the Housing Element. The City will review and revise, as necessary, the Housing Element for consistency when amendments are made to the General Plan.

General Plan Element	Policy	Description
Community Design and Historic Resources	1.4	Promote pride in community and excellence in design in conjunction with attention to and compatibility with existing residential and commercial environments.
	1.5	Continue to protect the privacy of neighbors and minimize the appearance of bulk in new homes and additions to existing homes.
	1.6	Continue to provide for site planning and architectural design review within the city, with a focus on mass, scale, character, and materials.
	1.7	Enhance neighborhood character by promoting architectural design of new homes, additions to existing homes, and residential developments that is compatible in the context of surrounding neighborhoods.
	1.8	Consider neighborhood desires regarding the character of future development through the establishment of development or design regulations.
	3.3	Encourage pedestrian- and bicycle-oriented design in the Downtown.
	3.8	Encourage the development of affordable housing above the ground floor throughout the Downtown.
	4.3	Evaluate development applications to ensure compatibility with residential neighborhoods south of the corridor.
	6.1	Ensure that the integrity of historic structures and the parcels on which they are located are preserved through the implementation of applicable design, building, and fire codes.
	6.2	The City shall regard demolition of Landmark structures, and historically significant resources, which have HRI rankings of 60 to 100 as a last resort. Demolition would be permitted only after the City determines that the resource retains no reasonable economic use, that demolition is necessary to protect health, safety and welfare or that demolition is necessary to proceed with a new project where the benefits of the new project outweigh the loss of the historic resource.
6.3	Work with property owners to preserve historic resources within the community, including the orchard, or representative portion thereof,	



General Plan Element	Policy	Description
	Summary of Consistency	<p>on the civic center site.</p> <p>The design-related policies of the Community Design and Historic Resources Element enhance the quality of housing in the city, encourage alternative transportation modes, support providing affordable housing and mixed-use projects, and balance preservation of historic resources with the benefits of new projects. These policies are consistent with the Housing Element.</p>
	Land Use	2.2
2.3		Continue to conduct design review of residential and nonresidential development applications to ensure compatibility with surrounding property and neighborhoods.
2.4		Promote the use of planned unit developments (PUDs) to achieve physical development that recognizes the unique qualities of a site and harmonizes with existing and future land uses in the vicinity.
2.5		For planned unit developments (PUDs), review, at a minimum, site plans and building elevations concurrently with tentative maps for future subdivision applications.
3.1		Encourage residential development above the ground floor that includes affordable housing units.
3.2		Consider zoning code incentives to encourage mixed-use development.
3.3		Consider a parking fee for residential use of City-owned parking plazas in lieu of additional parking requirements for below market rate housing residents.
3.4		Consider amending the zoning code to allow development of three-story buildings in the Downtown core to encourage construction of below market rate housing units.
4.2		Encourage mixed-use projects with retail, housing, and/or lodging in addition to retail and office uses.
4.3		Encourage residential development on appropriate sites within the El Camino Real corridor.
4.4		Encourage the development of affordable housing.
4.5		In the El Camino CT District, consider amending the zoning code to allow a third story for projects that include a residential component.
5.1		Consider amending the zoning code to allow increased development density and intensity for the provision of mixed use and affordable housing.
5.2		At the Foothill Plaza (Crossings) CN District, consider amending the zoning code to allow development of three-story buildings to encourage construction of below market rate housing units.
	Summary of Consistency	The Land Use Element policies encourage a variety of development types that include housing and affordable housing in commercial districts. These policies are consistent with the Housing Element.



General Plan Element	Policy	Description
Economic Development	2.5	Work with property owners and business associations to ensure an adequate supply of attractive parking with convenient access, as well as pedestrian and bicycle facilities, to accommodate patron and employee needs in all commercial areas in Los Altos.
	3.5	Allow mixed-use development with multifamily residential and commercial uses to provide alternative housing opportunities within the community.
	4.3	Promote the development of mixed-use commercial and residential developments within the El Camino Real area to provide housing opportunities within the community.
	4.4	Discourage the division of land and encourage the aggregation of parcels in the El Camino Real commercial area.
	4.5	Designate El Camino Real as the principal area for intensification of commercial and residential development.
	Summary of Consistency	The Economic Development Element policies support providing appropriate parking and alternative transportation modes, advance mixed-use development with housing, and designate the El Camino Real corridor for an intensification of development including housing. Maintaining larger lot sizes in the El Camino Real area should promote greater project efficiencies and result in more housing potential. These policies are consistent with the Housing Element.
Open Space, Conservation and Community Facilities	2.6	Adopt land use controls that prevent incompatible uses for parcels adjacent to existing open space lands and recreation areas.
	2.7	Establish buffers from adjoining land uses to protect the natural state of all creekside areas.
	10.1	Cooperate with other organizations and providers to promote and optimize resources for dependent residents.
	10.2	Adopt land use controls for second units, zoning, and day care that encourage dependent care services.
	Summary of Consistency	The Open Space, Conservation and Community Facilities Element policies promote retention of natural open space such as creek and recreation areas and require buffers from creekside areas. The policies support the development of necessary community facilities for such groups as dependent residents and alternative housing types such as second living units. These policies are consistent with the Housing Element.
Circulation	2.12	Provide adequate maintenance of local streets and roadways.
	2.14	Achieve residential street travel widths consistent with safe residential use of streets and with maintaining neighborhood character.
	2.15	Discourage construction of private streets.
	5.1	Continue to encourage off-street parking in residential areas.
	5.3	Reduce the amount of on-street parking in single-family residential neighborhoods caused by adjacent nonresidential and multifamily residential uses.
	Summary of Consistency	The Circulation Element policies will maintain streets and roads and maintain the residential character of the community. Policies to



General Plan Element	Policy	Description
		encourage off-street parking and to discourage private streets enhance residential development by managing parking and maintaining streets that meet the public standards. These policies are consistent with the Housing Element.
<p style="text-align: center;">Natural Environment and Hazards</p>	1.1	Update acceptable levels of risk/life safety standards when necessary, and see that buildings are brought up to those standards, consistent with state law.
	2.1	Work with other jurisdictions to regulate land uses in flood-prone areas and allow development in those areas only with appropriate mitigation.
	7.1	Ensure that new development can be made compatible with the noise environment by utilizing noise/land use compatibility standards and the Noise Contours Map as a guide for future planning and development decisions.
	7.2	<p>Enforce the following maximum acceptable noise levels for new construction of various noise-sensitive uses in an existing noise environment.</p> <ul style="list-style-type: none"> • 60 dBA CNEL is the maximum acceptable outdoor noise exposure level for single-family residential areas. • 65 dBA CNEL is the maximum acceptable outdoor noise exposure level for multiple-family residential areas. • 70 dBA CNEL is the maximum acceptable outdoor noise exposure level for schools (public and private), libraries, churches, hospitals, nursing homes, parks, commercial, and recreation areas. Excepted from these standards are golf courses, stables, water recreation, and cemeteries.
	7.3	Work to achieve indoor noise levels not exceeding 45 dBA CNEL in the event that outdoor acceptable noise exposure levels cannot be achieved by various noise attenuation mitigation measures.
	7.7	Require the inclusion of design features in development and reuse/revitalization projects to reduce the impact of noise on residential development.
	7.8	Require an acoustical analysis for new construction and in areas with a higher than established noise levels.
	8.4	Ensure location and design of development projects so as to conserve air quality and minimize direct and indirect emissions of air contaminants.
	Summary of Consistency	The Natural Environment and Hazards Element policies minimize risk by requiring structures to meet current seismic, noise, and flood regulations. An insignificant number of properties are located within the 100-year floodplain. These policies are consistent with the Housing Element.
<p style="text-align: center;">Infrastructure and Waste Disposal</p>	1.1	Continue to work with California Water Services Company to ensure that the City’s drinking water meets all federal and state water quality standards.
	1.2	Ensure that the California Water Services Company meets the demand for water for the population anticipated within the Los Altos water service area, and that adequate pressure levels are maintained.
	1.3	Review development proposals to determine whether adequate water pressure exists for existing and new development.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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July 25, 2017

Members of the Planning and Transportation Commission
City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

RE: Pending Density Bonus Ordinance and Zoning Amendments

Dear Members of the Planning and Transportation Commission:

The purpose of this letter is to express the importance of opportunities to address the City's housing needs and provide information regarding the City's housing element, pending density bonus ordinance and zoning amendments. The Department fully respects the many factors and challenges surrounding complex land use issues and appreciates the City's consideration in its decision-making.

California's high housing cost and lack of housing supply compromise the ability to access opportunity (jobs, health, stability) for families and individuals, including working families and persons with special needs. Homeownership rates are the lowest since the 1940s and the State has not met its projected needs for new housing in the last fifteen years. The State disproportionately has 21 percent of the nation's homeless population and over half of all households overpay for shelter.

Our State's housing needs are of vital importance and a priority of the highest order. Local and state governments have a responsibility to use their vested powers to promote the development of housing for lower income households (Government Code (GC) Section 65580). The pending density bonus ordinance and zoning amendments related to key opportunity sites to accommodate the regional housing need allocation are a tremendous opportunity for Los Altos to address its housing needs. The Department urges the City to consider the importance of decision-making consistent with state housing laws, including housing element law.

On May 29, 2015, the Department found Los Altos' housing element in compliance with state housing element law (Article 10.6 of the Government Code). This finding, among other things, was based on identifying Commercial Thoroughfare (CT) zoned sites to accommodate the regional housing need for lower income households. The finding was also based on important goals, policies and programs to provide incentives, including density bonuses consistent with state law and monitoring potential constraints such as heights and lot coverages (e.g., Programs 2.2.1, 2.3.1 and 4.3.4). This finding was also conditioned on amending zoning to permit emergency shelters by August 31, 2015.

The Department urges the City to act consistently with its housing element of the general plan, including providing incentives to mixed use development and complying with State Density Bonus Law (SDBL). Also the City should not create or perpetuate barriers to development such as economically constraining heights and moratoriums, particularly on CT zoned sites identified to accommodate the housing needs of lower-income households. For example, continuing to allow at least four stories on CT zoned sites, without density bonus law, is important to promoting development consistent with the housing element. Further, taking actions to prohibit, even temporarily, multifamily development is viewed as a serious constraint and contrary to planning and zoning law, particularly housing element and related laws. Taking or extending such action could warrant immediate action, including amending and submitting the housing element to identify and address this constraint on development and how current and projected housing needs will be met. With respect to SDBL and the City's pending ordinance, the Department offers the following information for the City's consideration:

Non-discretionary Action: Under Section 14.28.040 (application processing and review), the draft ordinance proposes for applications to be reviewed by the review authority charged with reviewing the broader development application. For your information, Government Code Section 65915(j)(1) and (f)(5) require:

The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval (Section 65915(j)(1)).

The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval (65915(f)(5)).

While the City may utilize a review body such as the Planning and Transportation Commission or City Council, the decision making related to a density bonus and concession or incentive must be non-discretionary.

Denial Findings: The proposed ordinance lists denial findings (under Section 14.28.040) that appear inconsistent with SDBL, Section 65915(d)(1). For example, the review authority must approve the request for a concession unless the concession "...is not required to provide for affordable housing costs..."). This finding appears inconsistent with Section 65915(d)(1)(A) which requires granting the concession or incentive unless:

The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs,...

The Section 65915(d)(1)(A) finding is intended to streamline and ease an applicant's approval for concessions and incentives and findings such as "...provide for affordable housing costs..." can be carried out in a potentially burdensome manner for an applicant, contrary the intent of and recent changes to SDBL.

Off-menu Incentives and Concessions (including parking alterations): The proposed ordinance includes two tiers of incentives and concessions: (1) On-menu Incentives and (2) Off-menu Incentives. The same approach is applied to parking alterations. While the Department recognizes the City's efforts to provide more certainty and streamlining for applicant's through on-menu concessions and incentives, the City's off-menu process appears inconsistent with SDBL. Specifically, the proposed ordinance requires applicants to include a pro forma to demonstrate the incentive or concession "...is needed in order to make the restricted affordable units *economically feasible*." However, an applicant should not be required to demonstrate economic feasibility and the City should grant or deny a request for concessions or incentives in compliance with Section 65915(d)(1). The Department recommends an alternative approach such as replacing the decision-making standard with Section 65915(d)(1).

65915 (d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

- (A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).*
- (B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.*
- (C) The concession or incentive would be contrary to state or federal law.*

The pending density bonus ordinance and zoning amendments provide a unique opportunity to address the housing needs of the community. The City can take a crucial step forward and contribute to the state, regional and local housing needs. In addition, taking action consistent with the housing element and state law has other benefits such as:

Sustainable Communities Strategy Consistency and Funding Incentives: Promoting affordable infill development is consistent the Sustainable Communities Strategy (Plan Bay Area) and can reduce greenhouse gases and meet requirements for funding programs. For example, the One Bay Area Grants utilize scoring criteria related to meeting housing objectives through the housing element and approving housing for all income levels.

Regional Housing Need Allocation (RHNA) Progress: Taking the appropriate action will result in much needed housing and would be considered progress toward the regional housing need. This progress can be reported as RHNA credit in the annual report on implementation of the general plan, pursuant to Government Code Section 65400.

Implementation Credit: Taking the appropriate action will implement programs in the housing element and would be looked at favorably when evaluated as part of the next housing element update. Housing element law requires a review of programs (e.g., implementation actions), including progress, evaluation of effectiveness, and revisions to future programs as appropriate. Approving projects or taking actions that implement programs assist in demonstrating the success of programs.

The Department fully respects the challenges and many factors the City is considering in these important land use decisions and appreciates the opportunity to provide comments and assist Los Gatos. The Department welcomes the opportunity to provide further assistance and is glad to meet with the City to discuss options. If you have any questions, please contact Paul McDougall, of our staff, at (916) 263-7420.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. McDougall', with a stylized flourish at the end.

Paul McDougall
Housing Policy Manager

cc: Chris Jordan, City Manager
Jon Biggs, Community Development Director