



## AGENDA REPORT SUMMARY

**Meeting Date:** February 22, 2022

**Subject** Consideration of proposed ordinance amending Titles 1 and 14 of the Los Altos Municipal Code relating to appeals, ongoing maintenance of required landscape features, inclusionary housing requirements for certain housing development projects, and density bonuses; consideration of CEQA exemption finding pursuant to CEQA Guidelines section 15061(b)(3); consideration of Planning Commission recommendation to study feasibility of proposed inclusionary housing requirements

**Prepared by:** Jolie Houston, City Attorney

**Reviewed by:** Laura Simpson, Interim Community Development Director

**Approved by:** Gabriel Engeland, City Manager

**Attachment(s):**

1. Proposed ordinance

**Initiated by:**

City Attorney's Office

**Previous Council Consideration:**

None

**Fiscal Impact:**

No direct fiscal impact is anticipated unless the City Council accepts the Planning Commission's recommendation to direct staff to obtain an inclusionary housing feasibility analysis. The cost of a feasibility analysis is currently unknown. A consultant contract over \$100,000 would require a separate City Council approval.

**Environmental Review:**

The proposed ordinance is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) in that the proposed ordinance would establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities, and none of the circumstances described in CEQA Guidelines Section 15300.2 applies.

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**Reviewed By:**

City Manager  
4882-0423-14842  
ERAMAKRISHNAN/27916001

City Attorney

Finance Director

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**Policy Questions for Council Consideration:**

Is the proposed ordinance in the best interest for protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare?

Can it be seen with certainty that the proposed ordinance will not result in significant and foreseeable environmental effects?

Does the City Council agree with the Planning Commission's recommendation to forgo changes to the City's inclusionary requirements pending a feasibility analysis?

**Summary:**

The proposed ordinance addresses the following four matters, which are discussed in greater detail below:

1. Appeals;
2. Ongoing maintenance of required landscape features;
3. Inclusionary housing requirements for certain housing development projects; and
4. Density bonuses.

At its January 6, 2022 meeting, the Planning Commission recommended approval of the ordinance with the exception of proposed amendments to Los Altos Municipal Code Section 14.28.020. In a separate action, the Planning Commission recommended that the City Council direct staff to obtain a feasibility analysis of inclusionary requirements, and to defer any amendments to Section 14.28.020 pending that analysis. If the City Council accepts the Planning Commission's recommendation, staff will develop a scope of work and request quotes from consultants, and the study could be commenced later this year. Completion of the study and implementation of its recommendations could be included as a program in the City's Housing Element for the next cycle.

**Staff Recommendation:**

City Council approval of the proposed ordinance and accompanying CEQA findings or, in the alternative, approval of the Planning Commission recommendation.

**Discussion/Analysis:**

*Proposed Amendments to Chapters 1.12 and 14.02.* During the process last December of adopting initial objective design standards for single-family homes in response to SB 9, two issues were raised that could not be addressed by resolution. The first issue was the delegation of the City Council's appeals authority under Chapter 1.12 of the Municipal Code. The City Council's resolution included language declaring that any person wishing to challenge the validity of any of



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the objective standards could do so through the appeals process in Chapter 1.12. Some members of the City Council suggested delegating the Council’s authority to hear those appeals to a city official or advisory body. The City Attorney opined that although the City Council has authority under the Municipal Code to adopt design standards by resolution, it does not have authority to delegate its appeals authority by resolution. The proposed ordinance includes a new Section 1.12.090 of the Los Altos Municipal Code to create that authority.

The second issue raised was a desire to include clear language in the objective single-family design review standards requiring property owners to maintain any landscaping installed to comply with the standards in perpetuity. Again, the City Attorney opined that creating new regulations for ongoing maintenance of property by resolution is not authorized by the Municipal Code. To address the concern, the proposed ordinance includes a new Section 14.02.055 of the Los Altos Municipal Code declaring that failure to maintain any landscaping required as part of any development project constitutes a nuisance.

***Inclusionary Housing Ordinance.*** Chapter 14.28 of the Municipal Code pertains to affordable housing and addresses both the City’s inclusionary housing requirements and its implementation of the State Density Bonus Law, Government Code Section 65915, et seq. The proposed ordinance would divide Chapter 14.28 into two separate articles, with the first pertaining to inclusionary housing and the second pertaining to density bonuses. The reason for this change is both to reflect that these are separate areas of the law and to facilitate dividing up the City’s density bonus ordinance into multiple sections to make it more user-friendly.

Regarding the inclusionary housing requirements, the ordinance proposes two changes. The first is to include definitions of certain terms in Section 14.28.010 currently found in Section 14.28.040, with some minor, nonsubstantive modifications to these definitions. These include definitions of terms used in the inclusionary housing ordinance that are currently defined in the City’s density bonus ordinance but that, as proposed, would no longer be included in the density bonus ordinance.

The second proposed change is to Section 14.28.020. The current requirement in Section 14.28.020 for for-sale projects with ten or more units is to provide 15% of units as affordable with a majority of those units for moderate-income households. The requirement has caused confusion and needs clarification. The stated goal of the requirement is to achieve a mix of units at all income levels, while prioritizing moderate-income units for for-sale projects. Because 100% is technically a majority, the requirement does not necessarily achieve a mix of units in every development. This has created confusion as to whether the term “majority” in the ordinance refers to an absolute or a bare majority. Upon review of the transcript for the entire Council meeting at which the ordinance was introduced, it appears the intent was for “majority” to mean an absolute majority, although concern that this may not result in a mix of units was expressed at the time.



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Under the proposed language, a minimum of 15% of total units would be affordable, with 7.5% of total units required to be for moderate-income households. The remaining affordable units would be required to be for very low or low-income households. Thus, in a hypothetical 100 unit project, 15 units would be affordable. Because fractional units are always rounded up under the City's inclusionary housing ordinance, 8 units (7.5% rounded up to the nearest whole number) would be for moderate-income households. The remaining 7 affordable units would be for very low or low-income households. In this way, the ordinance would promote a mix of units. Also, if the City Council adopts in-lieu fees, establishing a uniform inclusionary requirement at each income level will clarify the in-lieu contribution due from a developer who chooses to pay fees.

Another source of confusion has arisen when developers have sought to provide a majority of units for lower income households to qualify for density bonuses. At the time the ordinance was proposed, staff clarified that the ordinance is not intended to discourage developers from providing more units than required at each income level. For example, a developer may propose more lower income units than moderate income units to achieve a certain density bonus if the minimum number of moderate units required is also still provided (i.e., a majority of 15% of base density). This intent could be more clearly articulated in the text of the ordinance to avoid confusion, which proposed Section 14.28.020.C seeks to accomplish.

***Density Bonus Ordinance Update.*** Finally, the proposed ordinance repeals the City's density bonus ordinance and replaces it with a new ordinance to reflect the City's existing policies and procedures for density bonus requests. Government Code Section 65915(a) requires a city to adopt a density bonus ordinance to specify how it will implement the State Density Bonus Law. However, the only matter the ordinance is required to address is to describe the city's procedures to request a density bonus.

Cities take two general approaches to density bonus ordinances. The first is to replicate and enact at the local level the requirements of the State Density Bonus Law. The second approach is to codify local procedures for implementing the State Density Bonus Law. The City currently follows the first approach. The problem with this approach is that the State Density Bonus Law is amended by the Legislature in almost every legislative session in recent years. If the local ordinance is not updated whenever the state law is updated, then the local ordinance is inconsistent with state law and is therefore preempted. Another concern is that a local ordinance that largely replicates state law is unnecessary since the State Density Bonus Law is prescriptive, detailed, and mandatory.

For these reasons, it is recommended that the City adopt the second type of density bonus ordinance by codifying local procedures without necessarily replicating the entire State Density Bonus Law. The State Density Bonus Law was amended both in 2020 and 2021, making the City's ordinance inconsistent with state law. The need to update the ordinance provides an opportunity to change approaches.



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The City’s current density bonus ordinance is contained in one section of the Municipal Code but is approximately 13 pages long. As indicated above, the proposed ordinance would create a new article within Chapter 14.28 of the Municipal Code addressing the City’s density bonus requirements, which provides an opportunity to break the density bonus ordinance up into multiple sections to be more user-friendly. These new sections would accomplish the following:

- Section 14.28.040 would state that Article 2 of Chapter 14.28 of the Municipal Code “shall be known and may be cited as the Los Altos Density Bonus Ordinance.”
- Section 14.28.042 provides a list of definitions unique to the density bonus ordinance. Definitions worth noting include the following:
  - State Density Bonus Law requires that a proposed concession or waiver achieve an “identifiable and actual cost reduction to provide for affordable housing cost.” However, this term is not defined in state law. The proposed ordinance codifies the widely accepted definition of that term, which requires that the cost reduction be reasonably quantifiable and that it be no greater than necessary to subsidize the cost to the developer of providing affordable housing.
  - The ordinance would contain a definition of the term “maximum allowable residential density,” which would address two issues:
    - In a March 25, 2021 Notice of Violation to the City of Encinitas, the California Department of Housing and Community Development (“HCD”), which is the state agency that enforces the State Density Bonus Law, expressed HCD’s interpretation that Government Code Section 65915(f) requires density for purposes of the Density Bonus Law to be calculated on a gross density per acre basis, even if the local agency otherwise calculates on a net density basis. The proposed definition of “maximum allowable residential density” reflects that interpretation to guide City staff.
    - In certain zoning districts, neither the Zoning Ordinance nor the General Plan establishes a maximum residential density. Instead, density is controlled by design standards. To provide a basis to consider waiver requests in these districts, and consistent with procedures followed in many other cities, the City’s practice is to require a developer requesting a density bonus in a district with no established density to design a hypothetical project consistent with all applicable objective standards and with an average unit size that is the same or larger than the average unit size of the proposed project. The hypothetical project is then used to establish a base density for the project. The proposed definition of “maximum allowable residential density” reflects this process.



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- Finally, the State Density Bonus Law does not allow a city to require a “study” to justify a concession, but it does allow a city to require “reasonable documentation to establish eligibility” for concessions. The proposed ordinance includes a definition of “reasonable documentation to establish eligibility for a concession” to describe the type of documentation the City currently requires for this purpose.
  - Sections 14.28.044 and 14.28.046 would clarify that the City complies with the State Density Bonus Law, as it may be amended from time to time. Section 14.28.046 also addresses an ambiguity created by Section 14.28.040.E.7 of the City’s current density bonus ordinance. That provision of the current ordinance allows the City to grant a greater density bonus than required under state law but does not specify any procedure or criteria for granting such a bonus. As proposed, Section 14.28.046 would state that applicants are limited to the maximum density bonus allowed under state law except pursuant to a development agreement with the City.
  - Section 14.28.048 would carry over the City’s on-menu concessions from its existing density bonus ordinance. Language from the City’s existing open space on-menu concession that appears to have been borrowed accidentally from another city’s ordinance and that is not applicable to Los Altos is also proposed to be deleted.
  - Sections 14.28.050, 14.28.052, and 14.28.054 would codify the City’s existing density bonus application procedures, standards for affordable units, and processes for ensuring the long-term affordability of units.

***Density Bonus Ordinance Appendix.*** One feature of the City’s existing density bonus ordinance that the City’s planners have requested to be retained is the inclusion of certain tables from the State Density Bonus Law that specify the density bonuses to which projects meeting certain criteria would be entitled. The problem with including these tables is that they are frequently updated by the Legislature, thereby rendering the City’s density bonus ordinance out-of-date. A zoning text amendment is a major process, requiring multiple hearings, published notices, and significant staff time. It is not an efficient use of City resources to undergo this process on a regular basis to make nondiscretionary changes to the Municipal Code.

To retain the tables while avoiding the need to update the density bonus ordinance regularly to remain consistent with state law, an appendix is proposed for the density bonus ordinance. The proposed ordinance would authorize the city manager or designee to update the appendix administratively whenever the State Density Bonus Law is amended. The appendix contains tables found in the State Density Bonus Law, and it also contains tables summarizing provisions of the State Density Bonus Law, such as entitlements to concessions and required parking ratios. The tables reflect changes to the State Density Bonus Law enacted in the last two years. These include the following:





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- Except for 100% affordable projects, under prior law the maximum available density bonus was 35%. Current law allows for bonuses up to 50% when developers provide deep levels of affordability.
- Under prior law, a density bonus based on the provision of moderate-income units was available only for common interest developments governed under the Davis-Stirling Act. Current law applies to any for-sale development.
- Provisions of the State Density Bonus Law concerning student housing projects were amended in 2021, including by entitling such projects to one concession if certain criteria are met.
- The State Density Bonus Law's parking ratios have been amended in the past two years, including by providing for parking ratios as low as 0.5 spaces per unit for certain housing development projects providing 40% or more units as affordable to moderate-income households.

#### **Planning Commission Recommendation:**

The Planning Commission considered the proposed ordinance on January 6, 2022. The Planning Commission recommended adoption of the ordinance excepting proposed amendments to Section 14.28.020 of the Municipal Code. Commissioners expressed appreciation that the current text of the ordinance could be clearer, but they were also apprehensive about altering the City's inclusionary requirements without a feasibility analysis. In a separate action, the Planning Commission recommended that the City Council direct staff to obtain a feasibility analysis, and that the City defer any amendments to Section 14.28.020 pending the results of that analysis. As indicated earlier in this staff report, if the City Council accepts the Planning Commission's recommendation, staff will develop a scope of work and request quotes from consultants, and the study could be commenced later this year. Completion of the study and implementation of its recommendations could be included as a program in the City's Housing Element for the next cycle.

#### **Options**

- 1) Introduce ZTA21-005 and waive the first reading of the proposed ordinance

**Advantages:** The proposed ordinance will allow the City Council to delegate its appellate authority, clarify property owner obligations to maintain required landscaping, clarify and make uniform the City's inclusionary requirements for for-sale housing development projects, and update the City's density bonus ordinance to be consistent with current state law and to reflect the City's procedures for implementing the State Density Bonus Law.



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**Disadvantages:** Changes to the City's inclusionary requirements without a feasibility analysis may have unintended consequences.

2) Adopt the Planning Commission's recommendation

**Advantages:** Same as above but without clarification of the City's inclusionary requirements. The Planning Commission's recommendation would, however, allow the City an opportunity to study the effect of any future amendment to Section 14.28.020 of the Municipal Code.

**Disadvantages:** The City would not clarify and make uniform its affordability requirements for for-sale housing development projects. (Note that as an additional alternative, the City Council could adopt proposed Section 14.28.020.C without amending Section 14.28.020.B. This would provide some clarity while leaving open for another day any changes to the required mix of units.)

3) Do not introduce the proposed ordinance

**Advantages:** None.

**Disadvantages:** The City would not realize any of the benefits described above.

### **Recommendation**

The Planning Commission recommends Option 2. Staff recommends Option 1 or 2.