



**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 11/13/2024

ITEM NO: 6

DATE: November 8, 2024
TO: Planning Commission
FROM: Gabrielle Whelan, Town Attorney
SUBJECT: Make a Recommendation to the Town Council on an Ordinance Amending Chapter 29 (Zoning Regulations) of the Town Code Regarding the State Mandated Density Bonus, Pursuant to Implementation Program R of the 2023-2031 Housing Element. Adoption of this Ordinance is Exempt Pursuant to CEQA, Section 15061(b)(3) in that it can be Seen with Certainty that it will not Impact the Environment, Because the Town is Already Subject to Government Code Sections 65915 and Following. Town Code Amendment Application A-24-005. **Project Location: Town Wide.** Applicant: Town of Los Gatos.

RECOMMENDATION:

Forward a recommendation to the Town Council on an ordinance amending Chapter 29 (Zoning Regulations) of the Town Code regarding the State Mandated Density Bonus, pursuant to Implementation Program R of the 2023-2031 Housing Element.

CEQA:

Adoption of this ordinance is exempt pursuant to CEQA, Section 15061(b)(3) in that it can be seen with certainty that it will not impact the environment, because the Town is already subject to Government Code Sections 65915 and following.

BACKGROUND:

Implementation Program R of the Housing Element requires the update of the Density Bonus Ordinance to comply with state law.

State law, codified at Government Code Sections 65915 and following, aims to encourage the development of affordable housing by providing housing developers with certain incentives

PREPARED BY: Gabrielle Whelan
Town Attorney

Reviewed by: Planning Manager and Community Development Director

such as increasing density above the maximum allowed on the site by local zoning, reductions in local parking standards, concessions to reduce project costs, and reductions or waivers of applicable development standards. The level of the density bonus and the number of incentives or concessions increase as the percentage of affordable housing provided increases.

The Town's existing Density Bonus Ordinance (Exhibit 2) is codified in Section 29.10.405 through 29.10.440 of the Town Code. Based on changes to state law over the past several years, an update is required.

A copy of Government Code Sections 65915-65918, as currently enacted, is attached as Exhibit 3.

Government Code Section 65915(k) defines an "incentive or concession" as:

- 1) A reduction in site development standards or a modification of zoning code requirements or architectural design elements;
- 2) Approval of mixed-use zoning; and
- 3) Other requested regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs.

With regard to requested waivers of "development standards," Government Code Section 65915(o) defines "development standard" as "a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an on-site open space requirement minimum, lot area per unit requirement, or a parking ratio."

A local jurisdiction can deny requested incentives or concessions if there is substantial evidence of any of the following:

- 1) The concession or incentive does not result in identifiable and actual cost reductions;
- 2) Based on a uniform, identifiable standard, the concession or incentive would have a specific, adverse impact on public health and safety; or
- 3) The requested incentive would be contrary to state or federal law.

With regard to waivers, a local jurisdiction can only deny them if it can be demonstrated that the development standard would not physically preclude construction of the project as proposed.

Local jurisdictions are required to enact local ordinances to implement State Density Bonus law. The Town's Density Bonus ordinance is codified in Sections 29.10.405. and following of the Town Code. A copy of the Town's existing Density Bonus Ordinance is included as Exhibit 2.

Over the past several years, the state Legislature has amended Government Code Section 65915 several times. As a result, the Town is obligated to update its ordinance to bring it into compliance with state law. This update is also in response to Implementation Program R of the

Town's 2023-2031 Housing Element. In the interim, state law governs the Town's processing of density bonus projects.

DISCUSSION:

The proposed ordinance is based on a template developed by the Association of Bay Area Governments (ABAG) and incorporates all recent revisions to State Density Bonus law. The changes include:

- 1) Requiring that applicants submit an application form showing the following items:
 - a. The number of proposed affordable units by income level, the number of density bonus units proposed, the total number of dwelling units proposed on the site, and resulting density per acre;
 - b. A tentative map or preliminary site plan;
 - c. Zoning and General Plan designations and assessor's parcel numbers of the site;
 - d. A description of all dwelling units existing on the site in the five-year period preceding submittal of the application, including income and household size of renters;
 - e. The proposed phasing of affordable units in relation to market rate units; and
 - f. The marketing plan for the affordable units.
- 2) When an applicant seeks an incentive, the applicant shall explain and provide and the following items:
 - a. Detailing what the requested incentive is;
 - b. Reasonable documentation to show that the requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents;
 - c. If a waiver is sought, documentation that the Town's development standard will physically preclude construction of the project as proposed; and
 - d. Requests for any parking reductions sought.
- 3) Requiring that listed elements be included in the staff report accompanying a planning application;
- 4) Setting forth the grounds for denying a requested incentive;
- 5) Setting forth the grounds for denying a requested waiver; and
- 6) Requiring that the Town and the applicant enter into an affordable housing agreement.

CONCLUSION:

A. Summary

The Draft Ordinance aligns the Town's Density Bonus regulations with State law and responds to Implementation Program R of the 2023-2031 Housing Element.

B. Recommendation

Staff recommends that the Planning Commission forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code (Exhibit 4). . The Planning Commission should also include any comments or recommended changes to the Draft Ordinance in taking the following actions:

1. Make the finding that the proposed amendment is exempt pursuant to CEQA, Section 15061(b)(3), in that it can be seen with certainty that it will not impact the environment, and because the Town is already subject to Government Code Sections 65915 and following (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1); and
3. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code (Exhibit 4).

C. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance with modifications; or
2. Forward a recommendation to the Town Council for no changes to the Town Code; or
3. Continue the matter to a date certain with specific direction.

COORDINATION:

This report was coordinated with the Community Development Department.

FISCAL IMPACT:

Adoption of this ordinance will not have a fiscal impact in that the Town is already required to comply with Government Code Sections 65915 and following.

ENVIRONMENTAL ASSESSMENT:

Adoption of this ordinance is subject to the “common sense” exemption from CEQA in that it can be seen with certainty that it will not impact the environment, because the Town is already subject to Government Code Sections 65915 and following.

PAGE 5 OF 5

SUBJECT: State Density Bonus Ordinance

DATE: November 8, 2024

EXHIBITS:

1. Required Findings
2. Existing Density Bonus Ordinance
3. Current Version of Government Code 65915-65918
4. Proposed Density Bonus Ordinance

*This Page
Intentionally
Left Blank*