



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 8 - 0 0 0 9
JAN 1 5 2008

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTIONS 12.22, 12.24, 14.00 AND 19.01
OF THE LOS ANGELES MUNICIPAL CODE TO IMPLEMENT A DENSITY
BONUS PROGRAM, AS REQUIRED BY STATE LAW**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 05-1345

Honorable Members:

We are transmitting to you for your action, approved as to form and legality, a final draft ordinance. This draft ordinance amends the provisions of the Los Angeles Municipal Code so as to implement the state density bonus law.

Charter Findings

Pursuant to Charter Section 559, the Director of Planning has disapproved the draft ordinance on behalf of the City Planning Commission and recommended that the City Council not adopt it. Should the City Council adopt this ordinance, it may comply with the provisions of Charter Section 558 by either adopting the findings of the Director of Planning as set forth in her report dated January 14, 2008, or by making its own findings.

CEQA Findings

Regarding a finding pursuant to the California Environmental Quality Act (CEQA) and as set forth in a letter from the Director of Planning to the City Attorney's Office dated January 2, 2008, the Director of Planning recommends that the City Council

JAN 1 6 2008

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adopt a General Exemption for this project, Notice of Exemption No. ENV-2008-87-CE, pursuant to State CEQA Guidelines Section 15061(b)(3) and City CEQA Guidelines Art. II, Sec. 1, because it can be seen with certainty that codifying the procedures for implementing the state density bonus law will not have a significant effect on the environment.

Background

On April 4, 2006, your Planning and Land Use Management Committee (PLUM) approved the ordinance and recommended that it be adopted by the City Council with several modifications to the Commission's June 9, 2005, action.

On August 1, 2006, the Housing, Community, and Economic Development Committee (HCED) concurred with the PLUM action of April 4, 2006, and requested that the City Attorney draft an ordinance consistent with the amendments approved by PLUM.

The City Attorney did so and presented the draft ordinance to PLUM and HCED, meeting jointly, on November 6, 2007. The joint committee directed the City Attorney to draft an ordinance consistent with additional amendments approved by the joint committee and present that draft ordinance to the City Council. This final draft ordinance incorporates the changes recommended by the joint committee.

Summary of Ordinance Provisions

This ordinance makes changes to the existing density bonus provisions in the Code so as to implement the changes to the state density bonus law (SB 1818), which requires cities to permit increased density for market rate housing projects that include a percentage of the units "set aside" as affordable to a certain income group.

In January 2005, SB 1818 took effect. SB 1818 amended Government Code Section 65915 and significantly changed the State's existing density bonus program by lowering the number of affordable units that are required to be set aside in order to qualify for a density bonus. Projects may now qualify for a base density bonus of 20% (rather than the previous 25%), and the bonus may be increased to a maximum of 35% if additional affordable units are included.

The new law also requires cities to grant up to three "incentives" requested by an applicant, depending upon the percentage of affordable units and the target income group. An incentive is defined in the law as a deviation from any zoning or development regulation. The City must grant the incentive unless it can make one of the following findings: 1) the incentive is not required in order to provide for affordable housing costs or rents; 2) the incentive has a specific adverse impact upon health, safety or the

physical environment; 3) the incentive has an adverse impact on any real property that is listed in the California Register of Historical Resources.

The draft ordinance specifies a "Menu of Incentives" that includes deviations from the Zoning Code typically requested by housing developers. Applicants can also request incentives that are "off the Menu" but the process and notice requirements are more extensive for these requests. The intent is to implement the law in a way that balances the need for affordable housing with the integrity of local planning and zoning in maintaining livable neighborhoods.

The joint committee added language to Paragraph (g)(2)(i) c (ii) which would enlarge the City's ability to deny an incentive or concession to include a specific adverse impact on real property listed ". . . in the City of Los Angeles list of Historical-Cultural Monuments, or is a contributing structure in a designated Historic Preservation Overlay Zone" The state density bonus law allows cities to deny an incentive or concession only on the basis of an impact on real property ". . . listed in the California Register of Historical Resources" Thus, enlarging a city's ability to deny an incentive or concession to include impacts on historical or cultural resources recognized only by that city, but not the state, would appear to violate the state law.

In our opinion, it would not violate the state law to so enlarge the City's ability to deny an "on Menu" incentive or concession. The reason is that the state law does not require cities to offer on Menu incentives/concessions and thus it would not violate state law for a city to qualify such incentives/concessions. Also, even if a developer is denied an on Menu item, the developer still has the right to request the incentive or concession through the "off Menu" process. Therefore, we have modified the proposed language to apply to only on Menu incentives/concessions.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Departments of Housing and Building and Safety. The draft ordinance incorporates those changes that are acceptable to all the departments.

Fee Notice Requirement

The attached final draft ordinance contains fees. Prior to adopting a new fee or increasing an existing fee, the City Council must conduct a public hearing concerning the matter, as required by Government Code Section 66018. Notice of the time and place of the meeting at which the hearing will be held, including a general description of the matter to be considered, must be published in accordance with Government Code Section 66016 and 6602a. After conducting the hearing, the City Council should determine whether the amounts of the fees contained in the ordinance are appropriate.

The City Council may impose these fees so long as the fees do not exceed the expected cost of implementing this City program.

If you have any questions, please feel free to contact Deputy City Attorney Kenneth Fong at 213.978.8064. He or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By


CLAUDIA CULLING
Special Counsel – Municipal

CC/KTF:zra
Transmittal

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**City Attorney
Land Use/Real Property
Received**

JAN 14 2008

January 2, 2008

The Honorable Rockard J. Delgadillo
City Attorney
Room 800, City Hall East
200 North Main Street
Los Angeles, CA 90012

ATTN: Kenneth Fong, Deputy City Attorney

Dear Mr. Fong:

I am writing to provide you with information, pursuant to the California Environmental Quality Act (CEQA), regarding the environmental impact of the proposed implementing ordinance for the State density bonus law, SB 1818, that you are drafting. Amongst its major provisions, the amended State law requires cities to grant density bonuses and up to three incentives (defined as deviations from the Zoning Code) when a requisite amount of affordable housing is included as part of a housing project. The law requires that "all cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented."

The ordinance you are drafting is that ordinance required by SB 1818 in Govt. Code Section 65915, which became effective on January 1, 2005. Prior to this most recent amendment, the State density bonus law had been in effect since 1980 (with several intervening modifications), and the City has had an implementing ordinance for the State density bonus law since December 30, 1995. The City subsequently amended its implementing ordinance, effective January 15, 2003, to implement State law and other changes.

The proposed ordinance amends the previously adopted density bonus implementing ordinances (Ordinance Numbers 170,764 and 174,995) so that the City's procedures are in compliance with the amended State law. While the previous State law and City ordinances also permitted "incentives" in conjunction with density bonus projects, the amended law requires a specified percentage of affordable housing units that must be provided in order to receive incentives, and includes a maximum of three incentives. The proposed ordinance establishes new procedures for the filing and consideration of applications for density bonus requests, including procedures for considering requests for "incentives," as established in the amended State law. The implementing ordinance creates two sets of "incentives" (on menu and off menu) and filing procedures for each.

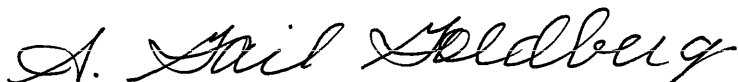
The implementing ordinance will not have a significant impact on the environment because it merely establishes the procedures for filing and reviewing requests for such projects. These projects must be reviewed and considered pursuant to the State law, regardless of how the City opts to implement the various provisions. As such, the substantive application of SB 1818 is already provided for in the State law and is already in effect.

Also, when measured against the baseline before SB 1818 went into effect in 2005, the City's implementing ordinance would not have a significant effect. Since the law went into effect on January 1, 2005, through October, 2007, 56 projects have used the density bonus provisions (i.e., executed covenants for the required affordable units) which represents only 2% of all multi-family residential projects for which permits have been issued in the City. Furthermore, these density bonus projects are dispersed throughout the 464 square miles of the City, and have not been concentrated in any one part of the City (see map attached).

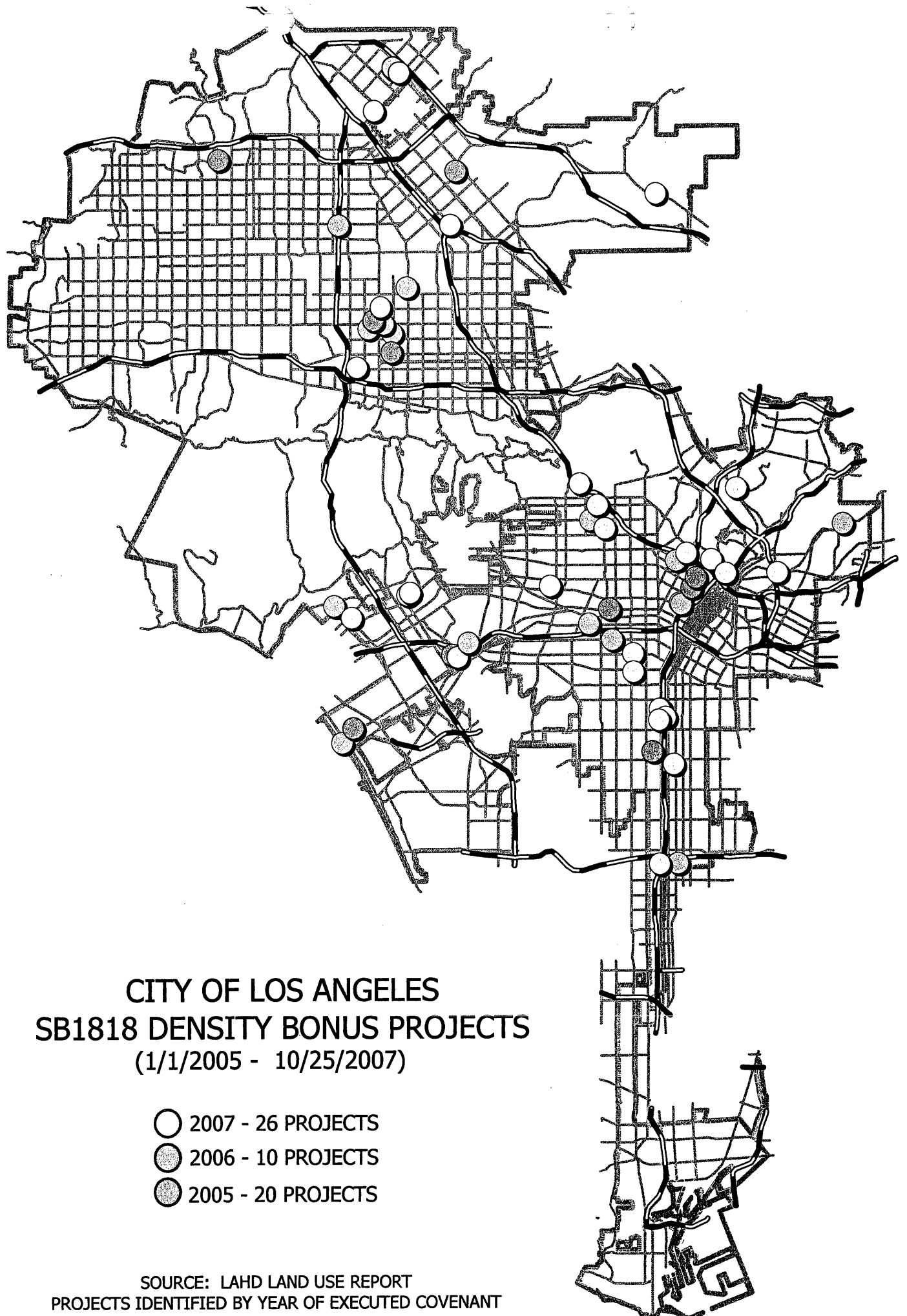
Additionally, the implementing ordinance requires that each project requesting a density bonus along with an incentive (except those projects in which the only deviation from the City's zoning regulations is compliance with the parking space requirements contained in the State law itself) will be subject to CEQA and reviewed on a case-by-case basis to determine whether or not the project has any impacts on the environment in which the project is located. Until projects are filed on a specific site, it would be too speculative to determine which 2% of the city's multi-family residential or commercially zoned parcels might utilize the density bonus provisions and whether or not any environmental impacts would be created, based on the previously-cited dispersal of projects using SB 1818 since the law went into effect.

SB 1818 has been in effect since January 1, 2005. As required by this law, the City has been accepting, reviewing, and making determinations regarding density bonus applications pursuant to the provisions of the State law since that date. Based on three years of experience, it can be seen with certainty that codifying procedures to implement the existing State law will not have a significant effect on the environment.

Sincerely,

A handwritten signature in cursive script, reading "S. Gail Goldberg".

S. GAIL GOLDBERG, AICP
Director of Planning



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January 14, 2008

CITY PLAN CASE NO: 2005-1101-CA
COUNCIL FILE NO: 05-1345
COUNCIL DISTRICTS: ALL

The Honorable Rockard J. Delgadillo
City Attorney
Room 800
City Hall East
200 North Main Street
Los Angeles, CA 90012

ATTN: Kenneth Fong
Deputy City Attorney III, Land Use Division

**AN ORDINANCE AMENDING SECTIONS 12.22, 12.24, 14.00 AND 19.01 OF THE
LOS ANGELES MUNICIPAL CODE TO IMPLEMENT A DENSITY BONUS
PROGRAM, AS REQUIRED BY STATE LAW**

Pursuant to the November 6, 2007 action of the Planning and Land Use Management (PLUM) Committee and the Housing, Community and Economic Development (HCED) Committee of the City Council, the Department of City Planning, in conjunction with your office, has prepared an ordinance pertaining to the subject matter described above.

Apart from technical clarifications and editorial changes, the attached proposed ordinance substantially differs from that which was approved by the City Planning Commission regarding incentives, restricted affordable units for sale and for rent, appeal procedures, and processing fees for the Housing Department.

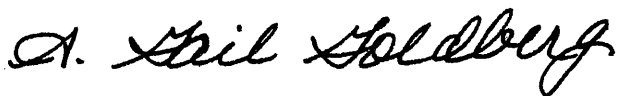
Pursuant to Section 559 of the City Charter, I have reviewed the findings of the City Planning Commission's action taken relative to Case No. CPC 2005-1101-CA on June 9, 2005 and on behalf of the Commission, I disapprove the ordinance insofar as it does not conform to the latest action of the City Planning Commission on this matter.



In the event the City Council adopts the PLUM and HCED Committees' recommended ordinance, transmitted herewith are proposed findings, as required by the Charter and the California Environmental Quality Act:

1. In accordance with Charter Section 556, the proposed ordinance is in substantial conformance with the purposes, intent, and provisions of the General Plan. The ordinance implements the goals, objectives, and policies of the Housing Element in particular, in that it encourages the development of affordable housing by complying with State Law that requires the City to adopt an ordinance to implement Government Code Section 65915, the State Density bonus law; and
2. In accordance with Charter Section 558 (b)(2), the proposed ordinance is in conformity with the public necessity, convenience, general welfare and good zoning practice. This ordinance will provide additional opportunities and incentives for the development of affordable housing which is needed throughout the City and will facilitate the production of housing at all income levels throughout the City; and
3. The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) and City CEQA Guidelines Article II, Section 1 because it can be seen with certainty that codifying procedures for filing and reviewing applications submitted pursuant to existing State law, and which are required in order to implement the State law, will not have a significant effect on the environment. In addition, projects filed in accordance with this ordinance will be subject to CEQA and analyzed individually regarding any potential environmental. Categorical Exemption Number ENV 2008-87-CE, has been issued for this ordinance.

Sincerely,



S. GAIL GOLDBERG, AICP
Director of Planning

ORDINANCE NO. _____

An ordinance amending Sections 12.22, 12.24, 14.00 and 19.01 of the Los Angeles Municipal Code to implement a Density Bonus program, as required by State law.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subdivision 25 of Subsection A of Section 12.22 of the Los Angeles Municipal Code is amended to read:

25. Affordable Housing Incentives – Density Bonus

(a) **Purpose.** The purpose of this subdivision is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies.

(b) **Definitions.** Notwithstanding any provision of this Code to the contrary, the following definitions shall apply to this subdivision:

Affordable Housing Incentives Guidelines – the guidelines approved by the City Planning Commission under which Housing Development Projects for which a Density Bonus has been requested are evaluated for compliance with the requirements of this subdivision.

Area Median Income (AMI) – the median income in Los Angeles County as determined annually by the California Department of Housing and Community Development (HCD) or any successor agency, adjusted for household size.

Density Bonus – a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and/or specific plan granted pursuant to this subdivision.

Density Bonus Procedures – procedures to implement the City's Density Bonus program developed by the Departments of Building and Safety, City Planning and Housing.

Disabled Person – 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.

Floor Area Ratio – The multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.

Housing Development Project – the construction of five or more new residential dwelling units, the addition of five or more residential dwelling units to an existing building or buildings, the remodeling of a building or buildings containing five or more residential dwelling units, or a mixed use development in which the residential floor area occupies at least fifty percent of the total floor area of the building or buildings. 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.

Incentive – a modification to a City development standard or requirement of Chapter I of this Code (zoning).

Income, Very Low, Low or Moderate – annual income of a household that does not exceed the amounts designated for each income category as determined by HCD or any successor agency.

Residential Hotel – 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.

Residential Unit – a dwelling unit or joint living and work quarters; a mobilehome, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobilehome park, as defined in California Health and Safety Code Section 18214; or a Guest Room or Efficiency Dwelling Unit in a Residential Hotel.

Restricted Affordable Unit – 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, as determined by the Los Angeles Housing Department.

Senior Citizens – 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.

Senior Citizen Housing Development – a Housing Development Project for senior citizens that has at least 35 units.

Specific Adverse Impact – 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.

Transit Stop/Major Employment Center – Any one of the following:

(1) A station stop for a fixed transit guideway or a fixed rail system that is currently in use or whose location is proposed and for which a full funding contract has been signed by all funding partners, or one for which a resolution to fund a preferred alignment has been adopted by the Los Angeles County Metropolitan Transportation Authority or its successor agency; or

(2) A bus stop located along a Metro Rapid Bus route; or

(3) The boundaries of the following three major economic activity areas, identified in the General Plan Framework Element: Downtown, LAX and the Port of Los Angeles; or

(4) The boundaries of a college or university campus with an enrollment exceeding 10,000 students.

(c) **Density Bonus.** Notwithstanding any provision of this Code to the contrary, the following provisions shall apply to the grant of a Density Bonus for a Housing Development Project:

(1) **For Sale or Rental Housing with Low or Very Low Income Restricted Affordable Units.** A Housing Development Project that includes 10% of the total units of the project for Low Income households or 5% of the total units of the project for Very Low Income-households, either in rental units or for sale units, shall be granted a minimum Density Bonus of 20%, which may be applied to any part of the Housing Development Project. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

Percentage Very Low Income Units	Percentage Density Bonus
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5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(2) **For Sale or Rental Senior Citizen Housing (Market Rate).** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 shall be granted a minimum Density Bonus of 20%.

(3) **For Sale or Rental Senior Citizen Housing with Low or Very Low Income Restricted Affordable Units.** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 and includes at least 10% of the total units for Low Income households or 5% of the total units for Very Low Income households shall be granted an additional Density Bonus of 15% more than that permitted in Subparagraph (2) of this paragraph, to a maximum of 35%.

(4) **For Sale Housing with Moderate Income Restricted Affordable Units.** A for sale Housing Development Project that includes at least 10% of its units for Moderate Income households shall be granted a minimum Density Bonus of 15%. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

Percentage Moderate 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	35

(5) **Land Donation.** An applicant for a subdivision, parcel map or other residential development approval that donates land for housing to the City of Los Angeles satisfying the criteria of California Government Code Section 65915(h)(2), as verified by the Department of City Planning, shall be granted a minimum Density Bonus of 15%.

(6) **Child Care.** A Housing Development Project that conforms to the requirements of Subparagraphs (1), (2), (3), (4) or (5) of this paragraph and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted either 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.

(ii) An additional Incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(7) **Fractional Units.** In calculating Density Bonus and Restricted Affordable units, any number resulting in a fraction shall be rounded up to the next whole number.

(8) **Other Discretionary Approval.** Approval of Density Bonus units shall not, in and of itself, trigger other discretionary approvals required by the Code.

(9) **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.

(10) **Additional Option for Restricted Affordable Units located near Transit Stop/Major Employment Center.**

In lieu of providing the requisite number of Restricted Affordable Units in a Housing Development Project located in or within 1,500 feet of a Transit Stop/Major Employment Center that would otherwise be required under this subdivision, an applicant may opt to provide a greater number of smaller units, provided that:

(i) the total number of units in the Housing Development Project including Density Bonus units does not exceed the maximum permitted by this subdivision;

(ii) the square footage of the aggregate smaller Restricted Affordable units is equal to or greater than the square footage of the aggregate Restricted Affordable Units that would otherwise be required under this subdivision;

(iii) the smaller Restricted Affordable units are distributed throughout the building and have proportionally the same number of bedrooms as the market rate units; and

(iv) the smaller Restricted Affordable Units meet the minimum unit size requirements established by the Low Income Housing Tax Credit Program as administered by the California Tax Credit Allocation Committee (TCAC).

(11) **Common Interest Development with Low or Very Low Income restricted Affordable Units for Rent.**

In a common interest development as defined in California Government Code Section 1351, such as a condominium, Restricted Affordable Units may be for sale or for rent.

(12) **Condominium Conversion.**

A Housing Development Project that involves the conversion of apartments into condominiums and that includes 33 percent of its units restricted to households of Low or Moderate income or 15 percent of its

units restricted to households of Very Low Income shall be granted a Density Bonus of 25 percent or up to three incentives as provided in Paragraph (e) of this subdivision.

(d) **Parking in a Housing Development Project.** Required parking spaces for a Housing Development Project that is for sale or for rent and qualifies for a Density Bonus and complies with this subdivision may be provided by complying with whichever of the following options requires the least amount of parking: applicable parking provisions of Section 12.21 A 4 of this Code, or Parking Option 1 or Parking Option 2, below. Required parking in a Housing Development Project that qualifies for a Density Bonus may be sold or rented separately from the dwelling units, so that buyers and tenants have the option of purchasing or renting a unit without a parking space. The separate sale or rental of a dwelling unit and a parking space shall not cause the rent or purchase price of a Restricted Affordable Unit (or the parking space) to be greater than it would otherwise have been.

(1) **Parking Option 1.** Required parking for all residential units in the Housing Development Project (not just the restricted units), inclusive of handicapped and guest parking, shall be reduced to the following requirements:

(i) For each Residential Unit of 0-1 bedroom: 1 on-site parking space.

(ii) For each Residential Unit of 2-3 bedrooms: 2 on-site parking spaces.

(iii) For each Residential Unit of 4 or more bedrooms: 2½ on-site parking spaces.

(2) **Parking Option 2.** Required parking for the Restricted Affordable Units only shall be reduced as set forth in Subparagraphs (i) and (ii) below. Required parking for all other non-restricted units in the Housing Development Project shall comply with applicable provisions of Section 12.21 of this Code.

(i) One parking space per Restricted Affordable Unit, except:

a. 0.5 parking space for each dwelling unit restricted to Low or Very Low Income Senior Citizens or Disabled Persons; and/or

b. 0.25 parking space for each Restricted Affordable Unit in a Residential Hotel.

(ii) Up to 40% of the required parking for the Restricted Affordable Units may be provided by compact stalls.

(e) Incentives.

(1) In addition to the Density Bonus and parking options identified in Paragraphs (c) and (d) of this subdivision, a Housing Development Project that qualifies for a Density Bonus shall be granted the number of Incentives set forth in the table below.

Number of Incentives	Required Percentage* of Units Restricted for Very Low Income Households	Required Percentage* of Units Restricted for Low Income Households	Required Percentage* of Units Restricted for Moderate Income Households (For Sale Only)
One Incentive	5% or	10% or	10%
Two Incentives	10% or	20% or	20%
Three Incentives	15% or	30% or	30%

* Excluding Density Bonus units.

(2) To be eligible for any on-menu incentives, a Housing Development Project (other than an Adaptive Reuse project) shall comply with the following:

- (i) The facade of any portion of a building that abuts a street shall be articulated with a change of material or with a break in plane, so that the facade is not a flat surface.
- (ii) All buildings must be oriented to the street by providing entrances, windows, architectural features and/or balconies on the front and along any street-facing elevations.
- (iii) The Housing Development Project shall not be a contributing structure in a designated Historic Preservation Overlay Zone and shall not be on the City of Los Angeles list of Historical-Cultural Monuments.

- (iv) The Housing Development Project shall not be located on a substandard street in a Hillside Area or in a Very High Fire Hazard Severity Zone as established in Section 57.25.01 of this Code.

(f) **Menu of Incentives.** Housing Development Projects that meet the qualifications of Paragraph (e) of this subdivision may request one or more of the following Incentives, as applicable:

(1) **Yard/Setback.** Up to 20% 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 provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(2) **Lot Coverage.** Up to 20% increase in lot coverage limits, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(3) **Lot Width.** Up to 20% decrease from a lot width requirement, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(4) **Floor Area Ratio.**

(i) 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%; or

(ii) In lieu of the otherwise applicable Floor Area Ratio, a Floor Area Ratio not to exceed 3:1, provided the parcel is in a commercial zone in Height District 1 (including 1VL, 1L and 1XL), and fronts on a Major Highway as identified in the City's General Plan, and

a. the Housing Development Project includes the number of Restricted Affordable Units sufficient to qualify for a 35% Density Bonus, and

b. 50% or more of the commercially zoned parcel is located in or within 1,500 feet of a Transit Stop/Major Employment Center.

A Housing Development Project in which at least 80% of the units in a rental project are Restricted Affordable Units or in which 45% of the units in a for-sale project are Restricted Affordable Units shall be exempt from the requirement to front on a Major Highway.

(5) **Height.** A percentage increase in the height requirement in feet equal to the percentage of Density Bonus for which the Housing Development Project is eligible. This percentage increase in height shall be applicable over the entire parcel regardless of the number of underlying height limits.

(i) In any zone in which the height or number of stories is limited, this height increase shall permit a maximum of eleven additional feet or one additional story, whichever is lower, to provide the Restricted Affordable Units.

(ii) No additional height shall be permitted for that portion of a building in a Housing Development Project that is located within 50 feet of a lot classified in an R2 or more restrictive residential zone. For purposes of this subparagraph, Section 12.21.1 A 10 of this Code shall not apply.

(6) **Open Space.** Up to 20% decrease from an open space requirement, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(7) **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.

(8) **Averaging of Floor Area Ratio, Density, Parking or Open Space, and permitting Vehicular Access.** A Housing Development Project that is located on two or more contiguous parcels or lots of record separated only by a street or alley, may average the floor area, density, open space and parking over the project site, and permit vehicular access from a less restrictive zone to a more restrictive zone, provided that:

- (i) the Housing Development Project includes 11% or more of the units as Restricted Affordable Units for Very Low Income households, or 20% of the units for Low Income households; and
- (ii) the proposed use is permitted by the underlying zone(s) of each parcel; and
- (iii) no further lot line adjustment or any other action that may cause the Housing Development Project site to be subdivided subsequent to this grant shall be permitted.

(g) **Procedures.**

(1) **Density Bonus and Parking.** Housing Development Projects requesting a Density Bonus without any Incentives (which includes a Density Bonus with only parking requirements in accordance with Paragraphs (c) and (d) of this subdivision) shall be considered ministerial and follow the Affordable Housing Incentives Guidelines and the Density Bonus Procedures. No application for these projects need be filed with the City Planning Department.

(2) **Requests for Incentives on the Menu.**

(i) The applicant for Housing Development Projects that qualify for a Density Bonus and that request up to three Incentives on the Menu of Incentives in Paragraph (f) of this subdivision, and which require no other discretionary actions, the following procedures shall apply:

a. **Application.** The request shall be made on a form provided by the Department of City Planning, as set forth in Section 11.5.7 B 2(a) of this Code, accompanied by applicable fees.

b. **Director's Authority.** The Director shall have the initial decision-making authority to determine whether an application for Density Bonus is consistent with this subdivision and the Affordable Housing Incentives Guidelines.

c. **Action.** The Director shall approve a Density Bonus and requested Incentive(s) unless the Director finds that:

(i) The Incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or Section 50053 for rents for the affordable units; or

(ii) The Incentive will 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 Very Low-, Low- and Moderate-Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

d. **Transmittal of Written Decision.** Within three business days of making a decision, the Director shall transmit a copy by First Class Mail to the applicant and to all owners of properties abutting, across the street or alley from, or having a common corner with the subject property, and to the local Certified Neighborhood Council.

e. **Effective Date of Initial Decision.** The Director's decision shall become effective after an elapsed period of 15 calendar days from the date of the mailing of the written decision unless an appeal is filed to the City Planning Commission.

f. **Appeals.** An applicant or any owner of a property abutting, across the street or alley from, or having a common corner with the subject property aggrieved by the Director's decision may appeal the decision to the City Planning Commission pursuant to applicable procedures set forth in Section 11.5.7 C6 of this Code that are not in conflict with the provisions of this paragraph (g)(2)(i). The appeal shall include a filing fee pursuant to Section 19.01 B of this Code. Before acting on any appeal, the City Planning Commission shall set the matter for hearing, with written notice of the hearing sent by First Class Mail at least ten days prior to the meeting date to: the applicant; the owner(s) of the property involved; and interested parties who have requested notice in writing. The appeal shall be placed on the agenda for the first available meeting date of the City Planning Commission

and acted upon within 60 days from the last day of the appeal period. The City Planning Commission may reverse or modify, in whole or in part, a decision of the Director. The City Planning Commission shall make the same findings required to be made by the Director, supported by facts in the record, and indicate why the Director erred making the determination. The appellate decision of the City Planning Commission shall be final and effective as provided in Charter Section 245.

(ii) For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests up to three Incentives listed in Paragraph (f), above, and that require other discretionary actions, the applicable procedures set forth in Section 12.36 of this Code shall apply.

a. The decision must include a separate section clearly labeled "Density Bonus/Affordable Housing Incentives Program Determination."

b. The decision-maker shall approve a Density Bonus and requested Incentive(s) unless the decision-maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (2)(i)(c), above.

(3) Requests for Incentives Not on the Menu.

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests an Incentive not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the incentive(s) are needed in order to provide the Restricted Affordable Units.

b. Notice and Hearing. The application shall follow the procedures for conditional uses set forth in Section 12.24 D of this Code. A public hearing shall be held by the City Planning Commission or its designee. The decision of the City Planning Commission shall be final.

c. The City Planning Commission shall approve a Density Bonus and requested Incentive(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)(c), above.

(ii) For Housing Development Projects requesting one or more Incentives not included on the Menu of Incentives in Paragraph (f) above, and which include other discretionary applications, the following shall apply:

a. The applicable procedures set forth in Section 12.36 of this Code shall apply.

b. The decision must include a separate section clearly labeled "Density Bonus/Affordable Housing Incentives Program Determination."

c. The decision-maker shall approve a Density Bonus and requested Incentive(s) unless the decision-maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)(c), above.

(h) **Covenant.** Prior to issuance of a Building Permit, the following shall apply:

(1) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Senior Citizens, a covenant acceptable to the Los Angeles Housing Department shall be recorded with the Los Angeles County Recorder, guaranteeing that the occupancy restriction to Senior Citizens shall be observed for at least 30 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.

(2) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Low or Very Low Income households, a covenant acceptable to the Los Angeles Housing Department shall be recorded with the Los Angeles County Recorder, guaranteeing that the affordability criteria will be observed for at least 30 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.

(3) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Moderate Income households for

sale, a covenant acceptable to the Los Angeles Housing Department and consistent with the for sale requirements of California Government Code Section 65915(c)(2) shall be recorded with the Los Angeles County Recorder guaranteeing that the affordability criteria will be observed for at least ten years from the issuance of the Certificate of Occupancy.

(4) If the duration of affordability covenants provided for in this subdivision conflicts with the duration for any other government requirement, the longest duration shall control.

(5) Any covenant described in this paragraph 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.

(i) **Fee Deferral.** At the option of the applicant, payment of fees may be deferred pursuant to Sections 19.01 O and 19.05 A 1 of this Code.

(j) **Applicability.** To the extent permitted under applicable State law, if a conflict arises between the terms of this subdivision and the terms of the City's Mello Act Settlement Agreement, Interim Administrative Procedures for Complying with the Mello Act or any subsequent permanent Mello Ordinance, Procedures or Regulations (collectively "Mello Terms"), the Mello Terms preempt this subdivision.

Sec. 2. The title of Section 12.24 U 26 of the Los Angeles Municipal Code is amended to read:

26. Density Bonus for a Housing Development Project in which the density increase is greater than the maximum permitted in Section 12.22 A 25.

Sec. 3. Subparagraph (4) of Paragraph (a) of Subdivision 2 of Subsection V of Section 12.24 of the Los Angeles Municipal Code is amended to read:

(4) that the developer has agreed, pursuant to Government Code Sections 65915-65918, to construct the development with the number of Restricted Affordable Units sufficient to qualify for a 35% Density Bonus, pursuant to Section 12.22 A 25 of this Code.

Sec. 4. The title of Subdivision 2 of Subsection A of Section 14.00 of the Los Angeles Municipal Code is amended to read:

2. Density increase for a Housing Development Project to provide for additional density in excess of that permitted in Section 12.22 A 25.

Sec. 5. Subsection O of Section 19.01 of the Los Angeles Municipal Code is amended to read:

O. **DENSITY INCREASE/AFFORDABLE HOUSING INCENTIVES.**

Type of Application	Filing Fee
Application for a Density Bonus including a request for one or more Incentives included in the Menu of Incentives pursuant to Section 12.22 A 25(e).	\$1,065.00*
Application for a Density Bonus pursuant to Section 12.22 A 25 including a request for an Incentive not included in the Menu of Incentives pursuant to Section 12.22 A 25(e).	\$3,742.00*
Application for a density increase in excess of that permitted by Section 12.22 A 25 pursuant to Section 12.24 U 25 and Section 14.00 A 2.	\$3,742.00*

Payment of the filing fee may be deferred until prior to the issuance of any Certificate of Occupancy, or until two years after the City's final decision granting or denying the application, whichever comes first. Moreover, the payment may be deferred only if a covenant and agreement is recorded with the County Recorder, to the satisfaction of the Housing Department, which covenant and agreement preserves the affordability of the restricted units in the event that the application is granted. No Building Permit for the development project may be issued unless the developer presents evidence that the fee has been paid and all other requirements for its issuance have been met.

Sec. 6. Chapter I of the Los Angeles Municipal Code is amended by adding a new Section 19.14 to read:

SEC. 19.14. FEES FOR ENFORCEMENT OF HOUSING COVENANTS. The following fees shall be charged and collected by the Los Angeles Housing Department for the preparation and enforcement of the affordable housing covenants described in Section 12.22 A 25(h)(1) through (3) of this Code.

Sec. 7. Statement of Intent. It is the intent of the City Council that the provisions of this ordinance shall apply to applications filed on or after the effective date of this ordinance, except that for sale Housing Development Projects with tract or parcel maps that have not been recorded as of the effective date of this ordinance are subject to the provisions of this ordinance regardless of language in tract or parcel map conditions or previously recorded covenants.

Sec. 8. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

FRANK T. MARTINEZ, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By Kenneth T. Fong
KENNETH T. FONG
Deputy City Attorney

Date 1-15-2008

File No. _____ Council File No. 05-1345

Pursuant to Charter Section 559, I
disapprove this ordinance on behalf of the
City Planning Commission and recommend
that it be adopted

January , 2008

See attached report.

S. Gail Goldberg
S. Gail Goldberg
Director of Planning