

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

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



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,



Paul McDougall
Housing Policy Manager

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

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January 2, 2018

Mr. Joe Hoefgen, City Manager
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Dear Mr. Hoefgen:

RE: Redondo Beach's 5th Cycle (2013-2021) Adopted Four-Year Housing Element Update

Thank you for submitting the City of Redondo Beach's housing element adopted September 19, 2017 and received for review on October 4, 2017. The Department also received Ordinance No. 3174-17 pertaining to zoning for emergency shelters on December 20, 2017. Pursuant to Government Code (GC) Section 65585(h), the Department is reporting the results of its review.

On July 20, 2017, the Department found the City of Redondo Beach's draft housing element to meet most statutory requirements. The Department also found the element would comply with housing element law once the City has completed zoning amendments to permit emergency shelters and submitted the adopted element. While the City has completed zoning for emergency shelters and submitted the adopted element, the Department understands the City, sometime shortly after July 20, 2017, has adopted an ordinance imposing a moratorium on mixed use development, including multifamily. The moratorium significantly limits the availability of sites identified in the element to accommodate lower-income households and constrains a variety of housing types, including multifamily and supportive housing. As a result, the element does not comply with housing element law and the following revisions are necessary:

1. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

The City has a total regional housing need of 1,397 units, including 595 for lower-income households. To accommodate the projected housing need for lower-income households, the City identified a capacity for 938 to 1,290 units with appropriate densities to accommodate lower-income households. However, the recently imposed moratorium precludes multifamily development on over two-thirds (640 units) of the identified capacity for lower-income households. Further, the remaining identified capacity for lower-income households appears attributed to Site #5 where the Department understands the City is processing a residential development application. While the Department acknowledges the City's efforts to process a residential

development application, the Department understands the application does not include housing for lower-income households; leaving potentially no capacity remaining to accommodate lower-income households. As a result, the element must list and analyze sufficient and suitable sites to accommodate the regional housing need for lower-income households and include program(s), as appropriate, to address a shortfall of capacity. The site listing and analysis and programs must address all the requirements of GC Section 65583.2. For more information, see <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml>.

In addition, please be aware housing element law and other housing related laws have been changed or added and take effect January 1, 2018. For example, no net loss law (GC Section 65863) was amended to clarify "At no time, ... shall..." a local government take action to cause an inventory to be insufficient to accommodate housing for lower-income households. In addition, housing element law was amended regarding analysis and programs related to the suitability and availability of sites (AB 1397). For more information, see the Department's website at <http://www.hcd.ca.gov/policy-research/lhp.shtml>.

2. *Analyze potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures (Section 65583(a)(5)).*

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. This is particularly important since the recently adopted element makes no mention of imposing a moratorium, nor was the Department made aware of this crucial information prior to its July 2017 findings. Further, GC Section 65858 was amended in 2001 for the purpose of heightening the standard of findings when imposing moratoriums on multifamily development. The City's findings do not appear to meet this heightened standard. For example, the City appears to be merely relying on a level of service (LOS) standard as a proxy for having a "specific, adverse impact upon the public health or safety standards" with little or no analysis to support making such a finding. Given the importance of encouraging multifamily development and not imposing constraints, the element must be revised to analyze the moratorium as a constraint on the cost, supply and timing of housing and include programs as appropriate to address and remove the constraint.

3. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, and emergency shelters and transitional housing. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily*

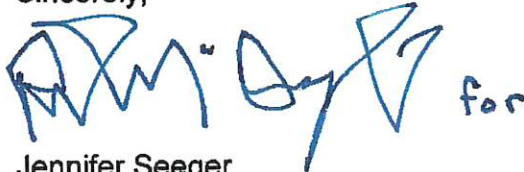
residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).

The housing element shall contain programs which address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing (Section 65583(c)(3)).

As noted above, the element does not list and analyze sufficient sites to accommodate the regional housing need and does not include analysis of imposing a moratorium as a potential constraint. Based on the results of complete analyses, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types and address and remove governmental constraints.

Once the element has been revised and adopted to address the above requirements, it will comply with State housing element law. For more information or assistance, please contact Greg Nickless, of our staff, at (916) 274-6244.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Seeger", followed by the word "for" in a smaller, simpler font.

Jennifer Seeger
Assistant Deputy Director

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February 13, 2015

Ms. Sabrina Landreth, City Manager
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Dear Ms. Landreth:

RE: Proposed Interim Ordinance on Multifamily Development

The Department understands the City of Emeryville is considering an urgency interim ordinance to establish a moratorium on multifamily development. Based on a preliminary review of agenda materials for the February 13, 2015 special City Council meeting, the Department is writing to assist the City in its decision-making and urges the City to postpone adoption of an urgency ordinance until there is further consideration of options.

The Legislature has declared that housing is of vital statewide importance and that each local government has the responsibility to consider economic, environmental, fiscal factors and community goals in addressing regional housing needs. The Department welcomes the opportunity to meet or discuss alternatives to adopting a moratorium while continuing to pursue Emeryville's housing and community objectives, particularly as contained in the recently adopted housing element.

On January 28, 2015, the Department found Emeryville's housing element in compliance with State housing element law (Article 10.6 of the Government Code). This finding is based on many sound policies and programs to address the housing needs of Emeryville. The City's housing element is an effective and meaningful planning document.

However, 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. This is particularly important since the recently adopted element makes no mention of considering a moratorium, nor was the Department made aware of this crucial information prior to its finding of compliance. If the City does establish a moratorium on multifamily development, the City should take immediate action to amend and submit its housing element to identify and address the constraint on development and how current and projected housing needs will be met.

The Department hopes this information is useful to Emeryville as it considers the moratorium. The Department supports the community's objectives to promote an inclusive community with a variety of affordable housing options. Please do not hesitate to contact us should you need assistance and further information as you weigh policy approaches to addressing current concerns.


Sincerely,



Paul McDougall
Housing Policy Manager

BIA notes (BUILDING INDUSTRY ASSOCIATION)

Zoning changes – post housing element

- Downzoning (height decrease of the CD and CD/R3 zones). This zoning change does not appear to meet the requirements of Cal Gov't code 65863, which reads in part: "65863 (b) (1) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1) and (2) of subdivision (g), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following: (A) ***The reduction is consistent with the adopted general plan, including the housing element. ...***"
 - The Housing Element was certified, May 29th, 2015. 
 - The city received an expedited review from HCD in order to enable Los Altos to meet funding criteria for the OBAG program.
 - On pages 70 and 94 of the Housing element the city boasts, "Another recent project in the downtown area at 100 First Street demonstrated a 48-unit project achieved a greater density of 48 units per acre for a residential-only project ***following key recent zoning changes that removed floor area limits and increased height limits.***" (Pg 70) "The downtown commercial CD/R3 Combining District ***was recently amended to allow up to a 45-foot height limit*** and no limit to the number of stories." (Pg 90)
 - What the city failed to inform HCD was that while this zoning was in place they had already formed a committee (Downtown Buildings Committee), on February 24th, 2015, of ardent anti-development citizens that had publicly opposed the development projects in the CD/R3 zone. The committee was further stacked by prohibiting any participation from downtown property owners, architects, developers or other real estate professionals, and the committee was mandated to not consider real estate economics in its work. The committee was charged with holding public meetings as it proceeded but declined to do so – ultimately stating that they had shared their work with their extensive network of fellow citizens. No public comment was ever considered on their work.
 - The original charter of the committee was to present a report that would inform the downtown visioning plan that the council was considering commissioning.
 - The Committee completed its work on December 17th, 2015 and initially presented their recommendations to the city's Planning and Transportation Committee. The PTC rejected the recommendations of the committee.
 - After rejection from the PTC, the committee's recommendations came to the Council in October of 2016. The council voted to accept the recommendations and immediately reversed the height increases and zoning changes that they had boasted about in the Housing Element just 16 months earlier, reducing building heights to a maximum of 30-feet in these two zones. This down zoning height reduction effectively eliminates the economic opportunity for any future development in these zones with out exceptions to the code. The council and the committee were well informed of this fact but made these zoning changes to prevent future development in the zones.

- Meeting date: City Council 10/25/2016, PTC 9/1/2016, 9/15/2016, 10/13/2016
 - In the Housing Element the city lists six (6) sites in these zones as potential future development sites. There are no longer economically viable sites based on the zoning changes.
 - On page 91 of the Housing Element the city states in Table B-40 that the maximum Structure Height in the CD and CD/R3 zones are 45-feet.
 - In the DMJM/Harris study that was completed for the City in 2008 it states that a rezoning (height increase from 30-feet to 45-feet) of the CD district should lead to the future development of 115 housing units in the zone. The downzoning has eliminated all project economics for development in the zone.
- Height measurement change for the purpose of eliminating a perspective development.
 - In October of 2012 the council changed how buildings are measured. Previously they had been measured to the top floor ceiling height. The new ordinance measures height to the roof deck. This change was adopted for the express purpose of preventing developers from achieving additional density.
 - The council attempted to make this originally in May of 2012 but were met by strong resistance from the community. They then formed a hand picked citizens committee to review the policy change and make recommendations. The committee made the recommendations that the council had tried to pass and then sent those recommendations to the Planning Commission. The Planning Commission unanimously rejected the recommendations of the committee. The council disbanded the planning commission and reconstituted the Planning and Transportation Committee. The committee recommendations were then presented to the newly formed PTC. Interestingly this meeting is the only meeting that is not video recorded. The presentation by staff was not an accurate portrayal of the ordinance changes being proposed. The PTC recommended adoption of the changes and sent the recommendation to council which adopted the changes at the last business meeting prior to an election that saw two council members termed out of office.
 - Meeting dates,
 - City council meeting 5/8/2012, Planning Commission meeting 6/21/2012, City Council meeting 7/24/2012, Planning and Transportation Committee 10/4/2012, City Council meeting 10/23/2012

Government constraints

The city has added significant Governmental constraints to the development of housing that were not disclosed in the Housing Element.

- Story Poles
 - The council began discussing requiring story poles for all multi-family developments at their September 9, 2014 meeting. The discussion regarding story poles continued on December 9, 2014, January 13th, 2015 and March 24th 2015.
 - Requiring story poles for multi-family projects was rejected 7-0 by the PTC on February 19th, 2015.

- Story poles became a requirement for multi-family development shortly after the Housing Element was approved by HCD.
- Story poles for multi-family developments add more than \$10,000 in speculative costs to a project pre approval and for larger projects the costs can exceed \$50,000. The council acknowledges that the story poles do little to identify the building but serve as a beacon to attract anti-development community members to attend public meetings to oppose projects.
- Photo simulation
 - The council has also adopted a policy to require photo simulation and 3D modeling for projects. These costs also exceed \$10,000 for a project. This requirement was adopted shortly after the Housing Element was approved by HCD.
- Art Fee (1% of development costs)
 - The council began discussing the possibility of adding a 1% art fee to projects in April of 2015. This fee was postponed until July of 2018. This fee is not listed as a potential Government constraint.