



**PUBLIC HEARING**

**Agenda Item # 12**

**AGENDA REPORT SUMMARY**

**Meeting Date:** July 9, 2019

**Subject:** Ordinance No. 2019-458: Density Bonus Regulations

**Prepared by:** Jon Biggs, Community Development Director

**Approved by:** Chris Jordan, City Manager

**Attachment(s):**

1. Ordinance No. 2019-458
2. May 16, 2019 Planning Commission Minutes

**Initiated by:**

City Council

**Fiscal Impact:**

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

**Environmental Review:**

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

**Policy Questions for Consideration:**

Shall the City Council adopt an amendment to the Density Bonus Regulations that limit use of an on-menu incentives to a single instance?

**Summary:**

A City's Density Bonus regulations establish procedures that implement the State's Density Bonus requirements, which are intended to increase the production of affordable housing, as well as housing for designated populations, such as seniors, disabled veterans, and foster youth. The draft code amendment is intended to limit use of the on-menu incentives to only once.

**Staff Recommendation:**

Introduce and waive further reading of Ordinance No. 2019-458 amending Section 14.28.040.F of the Los Altos Municipal Code regarding incentive standards

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**Reviewed By:**

City Manager

CJ

City Attorney

CD

Finance Director

SE

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### **Purpose**

The draft amendment is intended to limit use of an on-menu incentive to one instance.

### **Background**

At its meeting of April 9, 2019, the City Council directed staff to draft an amendment to Subsection 14.28.040 F. of the Los Altos Municipal Code to limit use of the on-menu incentives to only once per project.

The attached ordinance reflects the following amendment (highlighted and underlined) to the Density Bonus Regulations:

14.28.040 F. Incentive standards.

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

#### 1. On-Menu Incentives.

The City Council has determined that the On-Menu Incentives listed below, when individually applied only once to a project, would not have a specific, adverse impact.

### **Discussion/Analysis**

The state Density Bonus Law includes multiple facets that are each very technical. One of these is a requirement that eligible applicants receive a certain number of concession/incentives, ranging from one to three, depending on the percentage of affordable units being provided. Though they may take other forms, these incentives are most often a request for a reduced or modified development standard. Communities are limited in their ability to reject a requested incentive, with only three permitted grounds for denial.

One of these grounds is that the requested incentive would have a ‘specific, adverse impact’ on public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. The state law defines a ‘specific, adverse impact’ as “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed



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complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety.”

In an effort to communicate to potential applicants what types of incentives would be more acceptable to the community, the City of Los Altos has structured its density bonus ordinances to include a list of preferred incentives. In exchange for selecting a preferred incentive, Los Altos offers applicants an assurance of some type. The Density Bonus regulations adopted by the City Council includes this type of framework. As written, in exchange for choosing a preferred (or ‘on-menu’) incentive, the City agrees that the selected incentive does not have a ‘specific, adverse impact.’ This effectively means that if an applicant chooses one of these on-menu incentives, the City would have one less basis for potentially denying the request. (The remaining two grounds would be that the requested incentive is (1) contrary to state or federal law, or (2) does not result in identifiable and actual cost reductions to provide for affordable housing costs or for affordable rents.) The purpose of this framework is to steer applicants toward selecting incentives that the City and community find more tolerable than some potential alternatives.

An issue that has arisen since adoption of the Density Bonus Regulations is the use or application of an on-menu incentive more than once to project seeking relief to a site development standard. This is now commonly referred to as “double dipping” and an example could be the application of the on-menu 11’ height incentive twice, for an overall 22’ concession/incentive to the maximum permitted height. The draft amendment intends to limit use of an on-menu incentive to only once per project.

It is important to note that an applicant is not limited to requesting on-menu incentives. A request for an off-menu concession/incentive, those that are beyond the limits of the on-menu concession/incentives, may be made. However, in such instances the City would have three findings to deny such a request, so long as if there is sufficient evidence to support such a determination.

One point for Commission consideration is that an applicant who applies an on-menu incentive more than once “double dipping” is using up their incentive allotment towards the relief of one site development standard. The same relief to a development standard can be achieved by requesting one off-menu concession/incentive. The difference between these two scenarios is that by using off-menu concessions/incentives, an applicant may seek concessions/incentives to multiple standards for a project.

Given the demand for housing and limited supply of land, staff projects that developers will look for more ways to increase the number of units in a project and the proposed amendment could lead to projects with concessions/incentives requests for multiple site development standards.

The State Density Bonus Law is a very complicated, highly technical body of law that communities around the state grapple with. It substantially diminishes our local land use authority over areas in



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which the City is accustomed to much greater latitude. The draft amendment to the Density Bonus regulations is an effort to provide some balance between the State's Legislation and the unique circumstances of Los Altos. Staff recommends that the Planning Commission review the proposed amendment and develop a recommendation to the City Council.

### **Planning Commission Review**

At its meeting of May 16, 2019, the Planning Commission considered the proposed amendment to the Density Bonus regulations. The minutes from that meeting, attachment 2 to this agenda report reflect the following:

#### Public Comment

Resident Matt Hershenson spoke in support of the amendment, noting that the height of new development is an issue.

Resident Pierre Bedard spoke in support of the amendment.

Resident Phan Truong spoke in support of the amendment, noting that tall buildings can look directly into single-family properties and create parking impacts on nearby neighborhoods.

#### Commission Discussion

Commissioner Bodner expressed support for the amendment but noted that it may not really accomplishing much and that projects should not go beyond the 35 percent density bonus limit.

Commissioner Bressack expressed support for the amendment, noting that it will help staff to explain and guide applicants.

Commissioner Ahi expressed support for the amendment, noting that the City should explore other items to add to the on-menu list.

Vice-Chair Lee expressed support for the amendment.

Chair Samek expressed support for the amendment.

Action: Upon motion by Vice-Chair Lee, seconded by Commissioner Bressack, the Commission voted 6-0 to recommend approval of the ordinance amendment to the City Council.

AYES: Samek, Lee Ahi, Bressack, Bodner and Meadows

NOES: None



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ABSENT: None

**Options**

1) Adopt the Proposed Amendment to the Density Bonus Ordinance

**Advantages:** Limits the use of concessions/incentives to a single instance

**Disadvantages:** May result in more exceptions to site development standards

2) Recommend Denial of the Proposed Amendment to the Density Bonus Ordinance

**Advantages:** Maintains current ordinance

**Disadvantages:** Would allow application of concessions/incentives more than once per project

Staff recommends Option 1.

**ORDINANCE NO. 2019-458**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS  
ALTOS AMENDING SUB SECTION 14.28.040 F., INCENTIVE  
STANDARDS, OF THE LOS ALTOS MUNICIPAL CODE**

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

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

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

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

**WHEREAS**, staff has thus prepared a revised Density Bonus ordinance for the City of Los Altos, which is intended to amend existing Los Altos Municipal Code Subsection 14.28.040 F., Incentive Standards; and

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

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

**WHEREAS**, on May 16, 2019 the Planning and Transportation Commission reviewed the proposed ordinance and voted X-X, to recommend that the City Council approve the adoption of an amendment to Subsection 14.28.040 F, Incentive Standards, finding that this revision is in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the adopted general plan of the City; and

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

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

Ordinance No. 2019-458

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

**SECTION 2. AMENDMENT OF CODE.** Title 14 (Zoning) of the Los Altos Municipal Code shall be revised to reflect that the current Sub-Section 14.28.040 F., Incentive Standards, is amended as reflected below, and adopted:

F. Incentive standards.

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

1. On-Menu Incentives.

The City Council has determined that the On-Menu Incentives listed below, when individually applied only once to a project, would not have a specific, adverse impact.

- a. Lot Coverage. Up to 20 percent increase in lot coverage limits.
- b. Lot Width. Up to 20 percent decrease from a lot width requirement.
- c. Floor Area Ratio. In zone districts with a floor area ratio maximum, an increase in the maximum floor area equal to the floor area of the affordable housing units for the housing development project, up to a 35% increase in the floor area maximum.
- d. Height. Up to an eleven foot (11') increase in the allowable height.
- e. Yard/Setback. Up to 20 percent decrease in the required width or depth of any individual yard or setback except along any property line that abuts a single-family R1 zoned property.
- f. Open Space. Up to 20 percent decrease from an open space requirement, provided that (i) the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10 percent more than otherwise required by Chapter 12.40 (Uniform Code for the Abatement of Dangerous Buildings) and Landscape Ordinance Guidelines "O," and (ii) any such reduction is first applied to open space on any project floor or floors above grade.

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

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

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

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

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

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

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on \_\_\_\_\_, 2019 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2019 passed and adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Lynette Lee Eng, MAYOR



Attest:

\_\_\_\_\_  
Jon Maginot, CMC, CITY CLERK

**MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE  
CITY OF LOS ALTOS, HELD ON THURSDAY, MAY 16, 2019 BEGINNING AT 7:00  
P.M. AT HILLVIEW COMMUNITY CENTER SOCIAL HALL,  
97 HILLVIEW AVENUE, LOS ALTOS, CALIFORNIA**

**ESTABLISH QUORUM**

PRESENT: Chair Samek, Vice-Chair Lee, Commissioners Ahi, Bodner, Bressack and Meadows  
STAFF: Community Development Director Biggs, Planning Services Manager Dahl, and  
City Attorney Lee

**PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

None.

**ITEMS FOR CONSIDERATION/ACTION**

**CONSENT CALENDAR**

1. **Planning Commission Minutes**  
Approve minutes of the regular meeting of May 2, 2019.
2. **MOD19-0003 – Karen C. Maness – 124 Second Street**  
Modification to a previously approved landscape plan (part of design review application (00-D-04) that includes new side yard landscape screening and the removal of seven redwood trees.  
*Project Planner: Niday*

Action: Upon motion by Commissioner Bressack, seconded by Commissioner Bodner, the Commission approved the Consent Calendar with a change to the minutes from the May 2, 2019 Regular Meeting as amended by Chair Samek.

The motion was approved (6-0) by the following vote:  
AYES: Samek, Lee, Ahi, Bressack, Bodner and Meadows  
NOES: None  
ABSENT: None

**PUBLIC HEARING**

3. **18-D-06 and 18-SD-04 – Jeff Warmoth – 425 First Street**  
Multiple-Family Design Review and Tentative Subdivision Map for a new three-story multiple-family building with 20 condominium units and two levels of underground parking. *Project Planner: Dahl*

Planning Services Manager Dahl presented the staff report, recommending approval to the City Council of design review and subdivision applications 18-D-06 and 18-SD-04 per the listed findings and conditions.

Property owner/applicant Jeff Warmoth presented the application noting that this is a HAA (Housing Accountability Act) project that meets all objective standards.

### Public Comment

Resident Curtis Powell raised concerns about the project, noting that the story poles appear to make the building look very tall and bulky.

### Commission Discussion

Commissioner Meadows expressed general support, noting that the design is a significant improvement from the project reviewed at the study session; the project meets all objective standards with no incentives; and that it is important to ensure that the quality materials shown on the plans are installed during construction.

Commissioner Bressack expressed general support, noting that the project is a huge improvement from the project reviewed at the study session; concerned about the proposed tile roof – consider alternatives; and composition of exterior materials could be improved.

Commissioner Bodner expressed concern about the project design, noting that it appears to be patchwork of materials without an identifiable style; elevations and renderings should be more accurate; consider consistent window designs.

Commissioner Ahi expressed general support for the project density and small unit design, but noted concern that the design is too repetitive; the entry should be more of a focal point; recommended widening the entry hallways; suggested that an alternative roof materials be considered; and the project plans should be clarified and updated before the Commission makes a recommendation.

Vice-Chair Lee expressed general support for the project, noting that it is well scaled and articulated; however, the project design is an amalgamation; architectural style should be clarified; the window style and color are dark and heavy; and the project plans should be clarified and updated before the Commission makes a recommendation.

Chair Samek expressed general support for the project, but noted that the design issues should be addressed.

Owner/applicant Jeff Warmoth asked the Commission to provide an up or down vote, but that he was fine with changing the roof material and updating the exterior materials to address the other comments.

Action: Upon motion by Commissioner Bressack, seconded by Commissioner Bodner, the Commission continued design review and subdivision applications 18-D-06 and 18-SD-04 to the June 6, 2019 Planning Commission meeting with direction to update the design to address the Commission's concerns.

The motion was approved (5-1) by the following vote:

AYES: Lee Ahi, Bressack, Bodner and Meadows

NOES: Samek,

ABSENT: None

#### **4. 19-CA-02 – City of Los Altos – Amendment to Density Bonus**

Proposed amendment to Subsection 14.28.040 F., Incentive Standards, of the City of Los Altos Density Bonus regulations to further clarify how On-Menu incentives or concessions can be used for a project that seeks density bonus approval. *Project Planner: Biggs*

Community Development Director Biggs presented the staff report, recommending that the Planning Commission review the proposed ordinance and provide a recommendation to the City Council.

### Public Comment

Resident Matt Hershenson spoke in support of the amendment, noting that the height of new development is an issue.

Resident Pierre Bedard spoke in support of the amendment.

Resident Phan Truong spoke in support of the amendment, noting that tall buildings can look directly into single-family properties and create parking impacts on nearby neighborhoods.

### Commission Discussion

Commissioner Bodner expressed support for the amendment, but noted that is may not really accomplishing much and that projects should not go beyond the 35 percent density bonus limit.

Commissioner Bressack expressed support for the amendment, noting that it will help staff to explain and guide applicants.

Commissioner Ahi expressed support for the amendment, noting that the City should explore other items to add to the on-menu list.

Vice-Chair Lee expressed support for the amendment.

Chair Samek expressed support for the amendment.

Action: Upon motion by Vice-Chair Lee, seconded by Commissioner Bressack, the Commission voted 6-0 to recommend approval of the ordinance amendment to the City Council.

AYES: Samek, Lee Ahi, Bressack, Bodner and Meadows

NOES: None

ABSENT: None

### **COMMISSIONERS' REPORTS AND COMMENTS**

None.

### **POTENTIAL FUTURE AGENDA ITEMS**

The Commission requested that a meeting with the City's architectural peer reviewer Larry Canon be scheduled at a future meeting to review and discuss the peer review process.

### **ADJOURNMENT**

Chair Samek adjourned the meeting at 8:50 P.M.

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Zachary Dahl, AICP  
Planning Services Manager