

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

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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