



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 26, 2024

TO: Mayor and Members of the City Council

VIA: Dante Hall, City Manager

SUBMITTED BY: Timothy Rood, AICP, Community Development Director

SUBJECT: Repeal Local Density Bonus Regulations in Hercules Municipal Code and Reference State Density Bonus Law

RECOMMENDED ACTION:

Staff recommends that the City Council adopt Ordinance No. 24-XX (Attachment 2) the proposed amended provisions of Hercules Municipal Code Sections 13-6.100, 13-6.300 and 13-30.420, amending and renumbering Sections 13-30.460 and 13-30.470, repealing Sections 13-30.430, 13-30.440 and 13-30.450 and amending Section 13-60.200 to comply with the State Density Bonus Law and finding the action exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

PLANNING COMMISSION RECOMMENDATION:

On March 4, 2024, at their regularly scheduled meeting, the Planning Commission approved Resolution No. 24-02 (Attachment 3), recommending City Council approval of the amended provisions of the Hercules Municipal Code to comply with the State Density Bonus Law.

BACKGROUND:

The City of Hercules regulates and implements the State of California Density Bonus Law (SDBL). The current standards in the Municipal Code allow a sliding scale of density bonuses and the granting of concessions based on the amount and type of affordable housing that is provided, an unlimited number of waivers or reductions of local regulations, and parking reductions based on unit size.

Between 2018 and 2023, the State amended the SDBL 10 times (Attachment 4), so it has been challenging for cities to keep up with required updates to local density bonus ordinances. This proposal would amend the Municipal Code to be consistent with, and refer to, updated State law. The proposal contains the most up-to-date regulations regarding density bonus opportunities.

Since 2021, the City has been receiving housing-related technical assistance through the Association of Bay Area Governments (ABAG) as part of the Regional Early Action Planning (REAP) Grant Program from the State Housing and Community Development Department (HCD). The Contra Costa County Collaborative (C4) meets monthly to discuss housing-related topics, including completing and certifying housing elements, the implementation and complying with evolving State laws.

Recently, several Contra Costa County agency staff discussed repealing their local density bonus regulations/ordinances and adopting references to State law. This approach streamlines local implementation and eliminates the need for numerous amendments to the Zoning Ordinance as State law is amended in the future.

The State Density Bonus Law (SDBL) was adopted in 1976 to address California's affordable housing needs. The SDBL required local agencies to allow increased density, reduced standards, and development incentives based upon the number and type of affordable housing units proposed. Over time, the law has been expanded to include housing for households at a wider range of income levels and with specialized needs (for example seniors, students, foster youth, formerly homeless persons, and disabled veterans).

The SDBL applies to housing projects, including mixed-use developments, new subdivisions, and common-interest developments. Density bonuses and associated incentives and concessions are intended to offset the financial burden of constructing affordable units. The density bonus and associated concessions are based upon the amount and type of affordable units provided.

Qualifying residential projects which set aside a certain percentage of units for affordable residents may be eligible for one or more of the following under SDBL:

- Density Bonus: An increase above the maximum allowed density permitted in the General Plan Land Use Element or Zoning Code. The amount of the bonus depends upon the quantity of affordable units and the level of affordability.
- Incentives/Concessions: Modifications to City development standards that result in actual and identifiable cost reductions to provide for affordable housing costs or rents. The number of required incentives is based on the percentage of affordable units provided in the qualifying project. For example, developers may ask for increased

height above that allowed by the zoning regulations to accommodate the additional units granted in a density bonus.

- Reductions/Waivers: Modification to City development standards that would physically prevent the construction of a housing development at the density permitted with a bonus and any concessions, except where the waiver would cause a public health or safety concern, harm historical property, or would be contrary to the law. There is no limit to the number of reductions/waivers that may be requested. For example, applicants may request decreased setbacks and/or increased floor area ratio and/or waiver of hillside regulations that would preclude a qualifying project from being constructed at the proposed density.
- Reduced Parking Ratios - Parking ratios are defined based on unit size:
 - Zero to one bedroom: one on-site parking space per unit;
 - Two to three bedrooms: one and one-half on-site parking spaces per unit; and,
 - Four or more bedrooms: two and one-half parking spaces per unit.

ANALYSIS:

Existing Density Bonus Ordinance

Hercules Municipal Code Sections 13-30.420 *Purpose and Applicability*, 13-30.430 *Calculations*, and 13-30.440 *Incentives and Concessions* include the Residential Density Bonus standards. The last update to this portion of the City of Hercules Residential Density Bonus standards was in 2015, and it is therefore out of compliance with current State Density Bonus Law.

The SDBL includes much of the information that is currently included in Hercules Municipal Code, but it also includes additional definitions and options that have not yet been adopted by the City. For example, the SDBL now provides density bonus options for the construction of student housing, shared housing, and housing for transitional foster youth, disabled veterans, and homeless persons.

Proposed Ordinance

Staff proposes to repeal and replace the existing density bonus regulations with the Ordinance attached to this staff report. The new regulations would adopt the SDBL by reference and identify when the regulations apply. The draft ordinance also contains requirements related to physical constraints and parking reductions, outlines application requirements, and specifies the approval process for density bonus projects. The draft ordinance also acknowledges that future State law amendments may occur.

In future years, as the legislature continues to amend and/or refine SDBL (Attachment 5), the Hercules Municipal Code will remain consistent with State law, and the City will avoid frequent zoning updates. In addition, by referencing State law, City staff will find it easier to process applications and communicate relevant regulations to applicants, the public, and appointed/elected officials.

ENVIRONMENTAL DETERMINATION

The proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) – Common Sense Exemption in that the proposed ordinance would only establish and clarify administrative processes and would not facilitate new construction or other groundbreaking activities. It can be seen with certainty that there is no possibility that the ordinance would result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. Further, none of the circumstances described in CEQA Guidelines Section 15300.2 applies.

FISCAL IMPACT OF RECOMMENDATION:

There are no direct fiscal impacts associated with this item.

ATTACHMENTS:

- Attachment 1 –Staff Report – Density Bonus Regulations
- Attachment 2 – Draft Ordinance
- Attachment 3 – Planning Commission Resolution No. 24-02
- Attachment 4 –Legislative History Summary (2019-2022)
- Attachment 5 –Summary of Pending (2023-2024) Legislation