



Planning Commission Report

Planning Commission Meeting: May 13, 2020

Agenda Item: 9-A

To: Planning Commission

From: Jing Yeo, AICP, City Planning Division Manager

Subject: Proposed amendments to the Zoning Ordinance related to accessory dwelling units, density bonus, and family daycare home regulations for consistency with State law and update on State law provisions affecting the City's housing policies and project approval procedures.

Recommended Action

Staff recommends that the Planning Commission”

1. Adopt a Resolution recommending that the City Council amend the text of the Zoning Ordinance related to accessory dwelling units, density bonuses for certain affordable housing projects, and regulations pertaining to family daycare homes for consistency with State law; and
2. Review and discuss State law provisions affecting the City's housing policies and project approval procedures.

Background

On September 10, 2019, the City Council conducted a study session on policy options for protecting the City's existing housing stock and consideration of the role of new housing models (including smaller units, co-living models and transitory based housing models) in the production of housing serving the range of family and household sizes in the City. Council directed staff to address the issues in phases with a focus on protecting existing housing stock, with a particular emphasis on rent-controlled units, in the immediate term with further exploration and information for defining use regulations related to new housing models and considerations for unit size over a longer term.

On September 5, 2019, Governor Newsom signed SB234 into law prohibiting cities from requiring zoning permits or business licenses for family daycare homes. The Zoning Code already permits Small Family Daycare Homes without imposing standards or a permit. However, specific use standards applicable to large family daycare homes are located in SMMC Section 9.31.140.

On October 9, 2019, Governor Newsom signed 18 bills into law aimed at stimulating housing production by removing barriers to entitlements, including project streamlining, fee reductions, and limiting local control, to name a few. The following table provides a listing and summary of relevant housing-related legislation.

Bill	Summary
AB68, AB 881, and SB13	<ul style="list-style-type: none"> • Prohibits required replacement parking if a space is removed for an ADU. • Allows ADUs up to 850 square feet or 1,000 square feet (if more than one bedroom) and up to 16 feet in height. • Prohibits owner-occupancy requirement. • Requires ministerial approval within 60 days of application. • Prohibits impact fees on ADUs under 750 square feet. • Prohibits minimum lot size for ADU • Prohibits requirement for replacement parking garage is converted or demolished for ADU • Allows one ADU plus one junior ADU.
SB 330	<ul style="list-style-type: none"> • Faster approvals for housing and zoning changes. • Prohibits more than 5 hearings on any housing development project. • Statewide ban on (A) downzoning, (B) moratoriums on housing development, (C) non-objective design standards, and (D) limit on number of permits issued. • Requires relocation assistance and right of first refusal to displaced tenants.
AB 1763	<ul style="list-style-type: none"> • 100% affordable projects, with no more than 20% moderate income units receive 80% density bonus and four incentives or concessions. • 100% affordable projects, with no more than 20% moderate income units, within one-half mile of a major transit stop allowed unlimited density, four incentives and concessions, and up to three additional stories.

Discussion

The following provides a summary of existing regulations in the City’s Zoning Ordinance and what has changed with the enactment of new State legislation.

Large Family Daycares (SB 234)

Existing Regulations

The California State Department of Social Services regulates childcare facilities, including Family Child Care Homes. Many cities have additional regulations regarding location and operation of these uses in their zoning ordinances.

Santa Monica’s Zoning Code uses the term “Family Day Care” for these uses, and consistent with State licensing, includes two classifications:

- *Small*: up to 8 children in accordance with the State Health and Safety Code
- *Large*: up to 14 children in accordance with the State Health and Safety Code

Small Family Day Cares are permitted in all zoning districts that allow residential uses. There are no additional City requirements, provided that the facility receives its State license.

Large Family Day Cares are also permitted in all zoning districts that allow residential uses. However, for these facilities, SMMC 9.31.140 requires operational and locational requirements as follows:

A. Structures. *A Large Family Day Care shall conform to all property development standards of the Zoning District in which it is located unless otherwise provided in this Section.*

B. Noise. *The operation of a Large Family Day Care shall comply with noise standards contained in Chapter [4.12](#), Noise, of the Municipal Code. Noise from the operation of any Large Family Day Care may not exceed that which is customary in residential neighborhoods during daytime hours. Prolonged and abnormally loud noises shall not be considered customary, while the periodic sounds of small groups of children at play shall be considered customary in residential neighborhoods from 8:00 a.m. until 9:00 p.m.*

C. Hours of Operation. *Large Family Day Cares shall not be limited in hours or days of operation. No outdoor play is allowed before 8:00 a.m. or after 8:00 p.m. or sunset, whichever comes first, on weekdays and 9:00 a.m. to 8:00 p.m. or sunset, whichever comes first, on weekends.*

D. On-Site Parking. *On-site parking for Large Family Day Cares shall not be required except for that required for the residential building in accordance with Chapter [9.28](#), Parking, Loading, and Circulation.*

E. Passenger Loading. *Curbside loading shall be presumed adequate for drop-off and pick-up of children. A passenger loading plan shall be required in accordance with Section [9.28.080](#)(C) subject to the approval of the Director.*

F. Lighting. *Lighting must conform to Section [9.21.080](#), Lighting. In addition, passenger loading areas may be illuminated. If a passenger loading area is illuminated, the lighting shall be directed away from adjacent properties and of an intensity compatible with the residential neighborhood.*

G. Screening of Outdoor Play Areas. *A solid fence at least 4 feet in height shall be provided to screen rear setback outdoor play areas of a Large Family Day Care from adjacent residential properties. Fences shall comply with Section [9.21.050](#), Fences, Walls, and Hedges.*

H. Residency. *The operator of a Large Family Day Care must be a full-time resident of the dwelling unit in which the day care is located.*

I. State and Other Licensing. *All Large Family Day Cares shall be State licensed and operated according to all applicable State and local regulations.*

J. Concentration of Uses. *No more than one Large Family Day Care shall be permitted within 300 linear feet of the property line of any existing Large Family Day Care.*

Often, new Large Family Day Cares do not require a building permit, and no Planning permits are associated with initiation of the use, since it is permitted. Accordingly, Planning has reviewed Large Family Day Cares through a zoning conformance review conducted as part of the Business License process, with staff confirming consistency with the Code standards by reference in the zoning conformance review. The primary item that Planning would review in signing off on a business license is the last subsection of SMMC 9.31.140, Concentration of Uses, confirming that the new facility is not within 300 linear feet of a property with another Large Family Day Care.

New Regulations

This State legislation, which went into effect on January 1, 2020, precludes local jurisdictions from applying any zoning restrictions to family day cares that are not generally applicable to other residential properties in the same District. In addition, no City business license may be required for family day cares. Therefore, the City is now precluded from considering whether a new large family day care would result in a concentration of use (Standard J), which is recommended to be eliminated. Furthermore, since the City is left with no mechanism to enforce physical requirements, Standard G (Screening of Outdoor Play Areas) is also proposed to be eliminated. Limitations on hours of operation for outdoor play areas will also be eliminated since such restrictions are not placed on other residential properties.

Accessory Dwelling Units (AB68, AB881, SB13)

Existing Regulations

SMMC Section 9.31.300 contains development standards and procedures pertinent to accessory dwelling units. Generally, the laws governing ADUs have been relaxed to enhance the viability of these units as a housing option and encourage their production to expand the State's overall housing supply. Recent amendments have been made to the Zoning Ordinance to be in conformance with State law, largely intended to remove barriers to ADU production such as setbacks, size, and parking requirements.

New Regulations

The passage of Assembly Bills 68 and 881, and Senate Bill 13 in October 2019 further impacted the City's regulatory authority over Accessory Dwelling Units (ADUs). The revised law, now codified at Government Code Sections 65852.2 and 65852.22 reduces barriers for the production of ADUs by eliminating minimum lot size thresholds, minimizing setbacks from side and rear parcel lines, and prohibiting parking replacement requirements, while also expanding their applicability to include parcels containing multiple-unit developments. A new unit type is also now required to be permitted and is identified as a *Junior Accessory Dwelling Unit* (JADU). In order to expedite the review and approval of ADUs and JADUs, revisions to State law now dictate a strict ministerial time frame for approval not to exceed 60 days.

The proposed revisions found in Attachment A reflect the combination of the three bills attributed to ADUs and JADUs, which went into effect January 1, 2020. The table below

provides a summary comparison between the City's current standards and revisions required by new State law.

Standard	Current Zoning Ordinance	New State Law
Minimum Parcel Size	4,000 SF	No minimum parcel size
Maximum Number of Units	One ADU is permitted in association with a single-unit development	<p><i>Single-Unit Development:</i></p> <ul style="list-style-type: none"> • One ADU or one JADU is permitted per parcel, except that one JADU and one detached ADU may be permitted on a single parcel • JADUs are only permitted within single-unit zone districts <p><i>Multi-Unit Development:</i></p> <ul style="list-style-type: none"> • Two detached ADUs <p>AND/OR</p> <ul style="list-style-type: none"> • Any area not used as livable space and that can be brought up to State building standards for dwellings, can be converted to at least one ADU or to a maximum number that equals 25% of the existing unit count.
Maximum Size	<ul style="list-style-type: none"> • Parcels between 4,000 SF and 6,000 SF – 650 SF • Parcels greater than 6,000 SF – 800 SF 	<p><i>ADUs:</i> Can allow maximum size of up to 1,200 square feet</p> <p>Must allow maximum size of:</p> <ul style="list-style-type: none"> • Studio/1 bedroom – 850 square feet • 2+ bedrooms – 1,000 square feet <p><i>JADUs:</i></p> <ul style="list-style-type: none"> • Maximum size of 500 square feet
Parcel Coverage/ Floor Area	<ul style="list-style-type: none"> • R1 Zone District – Exempt from parcel coverage • All other zone districts – ADU is calculated into parcel coverage or floor area 	No parcel coverage standard can be applied that prevents construction of an ADU of 800 square feet
Setbacks	<p><i>Attached ADU:</i></p> <ul style="list-style-type: none"> • Shall comply with all the property development 	Rear and side setbacks – 4 feet

Standard	Current Zoning Ordinance	New State Law
	<p>standards for the primary dwelling</p> <p><i>Detached ADUs - Up to 14 Feet in Height:</i></p> <ul style="list-style-type: none"> • Shall not extend into the required minimum side yard setback and shall be at least 5 feet from the rear parcel line <p><i>Detached ADU - Over One Story or 14 Feet in Height:</i></p> <ul style="list-style-type: none"> • Same minimum side setback requirement as the principal building on the parcel, but in no case less than 5 feet • Setback of at least 5 feet from the rear parcel line. The second story portion shall be no closer than 15 feet from the centerline of the alley or 15 feet from the rear property line where no alley exists. • For second story portions constructed above an existing garage, a setback of 5 feet from the side and rear parcel lines shall be required 	<p>For ADU within an existing structure or reconstructed within the footprint of an existing structure, setback only required as necessary for health and safety</p>
<p>Unit Requirements</p>	<ul style="list-style-type: none"> • No interior access between the ADU and primary dwelling is permitted • Exterior access separate from the primary dwelling shall be provided • Independent eating and cooking facilities including, but not limited to, a sink, refrigerator, and a stovetop and/or oven shall be provided • Independent sanitation facilities including, but not limited to, a sink, toilet, and a shower and/or bathtub shall be provided 	<p><i>ADUs:</i></p> <ul style="list-style-type: none"> • No interior access between the ADU and primary dwelling is permitted • Exterior access separate from the primary dwelling shall be provided • Independent eating and cooking facilities including, but not limited to, a sink, refrigerator, and a stovetop and/or oven shall be provided • Independent sanitation facilities including, but not limited to, a sink, toilet, and a shower and/or bathtub shall be provided <p><i>JADUs:</i></p> <ul style="list-style-type: none"> • Exterior access separate from the primary dwelling shall be provided;

Standard	Current Zoning Ordinance	New State Law
		<p>however, interior connection is permitted.</p> <ul style="list-style-type: none"> An efficiency kitchen that includes a cooking facility with appliances and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU shall be provided May provide individual or share sanitation facilities with the primary dwelling
Parking	<ul style="list-style-type: none"> Additional on-site parking is not required for an ADU Converted parking spaces are required to be replaced 	<ul style="list-style-type: none"> Additional on-site parking is not required for an ADU Converted parking spaces are not required to be replaced
Owner Occupancy, Rental, and Sale	<ul style="list-style-type: none"> Either the primary single-unit dwelling or the ADU shall be owner-occupied. Either the primary single-unit dwelling or the ADU unit may be rented, but both may not be rented at the same time. An ADU shall not be offered for sale separately from the primary single-unit dwelling. The primary single-unit dwelling or the ADU shall only be offered for residential occupancy for more than 30 days. 	<p><i>ADUs:</i></p> <ul style="list-style-type: none"> Cannot require owner occupancy for permits issued after January 1, 2020 and on or before January 1, 2025 May be rented, but not sold separately from the primary dwelling No short-term rentals (30 days or less) in most newly constructed ADUs (see Gov't Code 65852.2(e)) <p><i>JADUs:</i></p> <ul style="list-style-type: none"> Owner occupancy required in either the JADU or primary dwelling May be rented, but not sold separately from the primary dwelling No short-term rentals (30 days or less)

Policy Questions for Consideration and Staff Recommendation

While State law removes many barriers to the production of ADUs, there are areas where the City may continue to exercise discretion in order to shape the development of ADUs. The following policy questions with respect to ADUs are presented for the Planning Commission’s consideration along with staff’s recommendation:

- **Size: Should there be a minimum and maximum ADU size or should there be only one allowable ADU size?**
 - State law: Only requires that the City guarantee 800 square feet, but establishes minimum maximum of 850 square feet and 1,000 square feet for an ADU that provides more than one bedroom.
 - Recommendation: Yes. In order to reduce confusion, staff recommends a maximum allowable size of 850 square feet for studio/1-bedroom and 1000 square feet for two bedrooms or more.

- **Applicability of Parcel Coverage Exemption: Should the total floor area of ADUs be exempted from parcel coverage in all zones or should the exemption be limited to ensuring allowance of 800 square feet as required by State law?**
 - State law: Requires that the City ensure allowance of 800 square feet for an ADU. As part of the R1 standards update, the City Council exempted ADUs in the R1 District from parcel coverage calculations. Currently, the Zoning Ordinance does not address parcel coverage calculations in any other district. State law did not require JADUs at the time, so the Zoning Ordinance is also currently silent on JADUs.
 - Recommendation:
 - ADUs and JADUs in the R1 District: Staff recommends that ADUs remain exempt from parcel coverage in the R1 District. Because JADUs are limited to 500 square feet and must be located wholly within the footprint of an existing or proposed single-unit dwelling, staff proposes that they are exempt from parcel coverage.
 - ADUs and JADUs constructed on parcels with single-unit dwellings in all other zones: In all other zones, for ease of implementation, staff recommends that ADUs and JADUs constructed on parcels with single-unit dwellings located in all other districts be exempt in the same manner as in the R1 District.
 - ADUs in multi-unit residential and commercial districts: Staff recommends that up to 800 square feet be exempt from parcel coverage calculations as required by state law.
 - **Special note regarding existing multi-unit dwellings: State law requires the City to permit the conversion of non-livable space in an existing multi-unit dwelling into ADUs, subject to certain restrictions. This provision appears to preclude the City from prohibiting the conversion of units based on parcel coverage or FAR calculations so long as the conversion meets all of the requirements set forth in the Government Code.

- **JADU Location: Are JADUs allowed in single-unit dwellings in multiple unit zones?**
 - State law: Only requires the City to allow JADUs in single-unit dwellings in single-unit zones. The law is silent regarding single-unit dwellings in multiple-unit zones.

- Recommendation: Staff recommends allowing JADUs in single-unit dwellings located in multiple-unit zones to have consistency in regulations for all single-unit dwellings regardless of which zone they are located.
- **Size of Second Floor of ADU; applicability of setbacks in the R1 District: Should the Zoning Ordinance continue to require that the second floor of an ADU not be larger than its first floor and that portions of an attached ADU or JADU located on the second floor of a single-unit dwelling in the R1 District comply with setback requirements?**
 - State law: State law establishes minimum setbacks but does not restrict the City's ability to shape the massing of the second floor of any ADU.
 - Recommendation: Yes. Staff recommends that these restrictions should continue in the proposed amendments to ensure that the second floor of ADUs are proportional to the first floor so as not to minimize impacts on adjacent properties.
- **Applicability of Owner Occupancy Limitations: How should the City address owner occupancy limitations for ADUs that received their permits before January 1, 2020 and on or after January 1, 2025?**
 - State law: Prohibits the City from imposing an owner occupancy requirement on an ADU that receives its building permit after January 1, 2020 but before January 1, 2025.
 - Recommendation: For ADUs that existed prior to January 1, 2020, staff recommends that the ADUs be subject to the owner-occupancy requirement that was in place at the time the ADU was permitted. This approach ensures that property owners who constructed ADUs before regulations for short-term rentals were updated may continue to be those units for that purpose. Otherwise, short-term rentals are not permitted.

For ADUs that are permitted on or after January 1, 2025, there should be an owner-occupancy requirement that applies, consistent with City's current law and also would be consistent with the minimum requirements of State law.

- **Special note regarding new housing models: While concerns have been raised about the intersection of these owner-occupancy provisions with some new co-living and transitory housing models, staff believes that these should be addressed through forthcoming policy recommendations with respect such new housing models.

Housing Crisis Act of 2019 (SB330)

Senate Bill 330, also referred to as the Housing Crisis Act (HCA) of 2019, was signed into law by the Governor on October 9, 2019, and became effective on January 1, 2020. The provisions of HCA respond to the housing supply crisis in the state and exacerbated need for affordable homes. The laws are imposed to address housing project review timelines and place restrictions on local governments to prevent new policies, standards, or

conditions that would limit housing development. The provisions of HCA are effective until January 1, 2025. As the provisions have an established sunset date, staff is not proposing the Zoning Ordinance be amended to accommodate the HCA’s provisions. Instead, the City intends to comply with the requirements of SB330 and staff anticipates releasing a guidance document on its implementation by early March.

Housing Project Applications and Timelines

The HCA requires local governments to complete their review and approval process for housing developments within certain time periods. A new optional “preliminary application” may be submitted by an applicant with submittal requirements and information specified in the law. The preliminary application ensures certain vesting rights of ordinances, standards, and fees in effect on the date the preliminary application is deemed complete by City Planning staff. If the applicant submits a complete development application within 180 days of submitting a preliminary application the vested regulations and applicable fees shall remain in effect for the remainder of the entitlement and permitting process.

The table below presents a comparison of the Permit Streamlining Act timeframes and highlights those impacted by the HCA where the timeframes for action have been shortened for a local government to take action on a project. The Housing Crisis Act does not limit or modify the requirements of the California Environmental Quality Act and potential environmental impacts of proposed projects on historic and cultural resources.

Comparison of Existing Permit Streamlining Act Timeframes vs. SB330		
	Prior State Law	Amended State Law
Any project requiring an Environmental Impact Report (EIR)	180 days from date of certification	No Change
“Development Project”, consisting of residential units only; mixed-use development (2/3 of square footage as residential); or transitional/supportive housing, requiring an EIR	120 days from date of certification	90 days from certification
“Development Project”, with a minimum 49 percent of residential units affordable to very low or low-income households, requiring an EIR	90 days from date of certification	60 days from certification
Any project requiring the preparation of a Negative Declaration	60 days from date of adoption	No Change
Any project determined to be Exempt from CEQA	60 days from date of determination	No Change

The following graphic provides a comparison of the timeline from application submittal to project approval for a project that chooses to use the SB330 process versus a project that uses the City’s current process:

App Submitted	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
<i>Application Review under the Housing Crisis Act of 2019</i>								
Preliminary Application Submitted Vesting of fees, standards, and policies		Staff Deem Complete Developer has 180 days (6 months) to submit formal application or loses vested rights	AA Review Shot Clock <i>Any ministerial review and ARB design review must be completed in 60 days</i> Maximum of 5 public hearings		AA is Approved and Issued			
				If an EIR is Required Staff has 60, 90, or 180 days to approve all entitlements following certification of the EIR Maximum of 5 public hearings				
<i>Application Review under Current AA Processes</i>								
Staff Deem Complete Demolition clearance is required prior to filing		AA Review Comments, clarifications, and corrections are communicated to the applicant If located in the DCP area, ARB Preliminary Review is required.		AA is Approved and Issued Followed by ARB review and Plan Check				

Restrictions on Local Governments

SB 330 restricts local governments from applying new policies, standards or conditions that would limit housing development on properties where housing is a permitted use. It prevents local governments from taking zoning actions that result in downzoning and prohibits the ability to impose moratoriums or similar restrictions on housing development. Local governments are limited to a maximum of five public hearings for housing project proposals that comply with all applicable zoning standards. These include informational hearings, hearings at which the project is continued to another date, and appeal hearings (CEQA determination appeals are not counted toward the limit). Local governments are also prohibited from denying housing development projects for very low, low, or moderate income households, unless certain written findings are made.

Replacement Housing Units

The HCA also provides additional requirements for housing project proposals that involve the demolition of existing residential units to replace all existing or demolished protected units in areas where residential growth is planned. Protected units include deed-restricted units affordable to households of lower or very low income within the past five years, units under local rent control within the past five years, units that are or were occupied by lower or very low income households within the past five years, and units that were withdrawn under the Ellis Act within the past 10 years. Additional provisions include relocation assistance and right of first refusal to comparable units in the replacement project.

Density Bonus for 100% Affordable Housing (AB1763)

On October 9, 2019, the Governor signed into law Assembly Bill 1763 (AB 1763), amending state density bonus law applicable to multi-family housing projects that are inclusive of affordable housing units. Effective January 1, 2020, the amendments to Section 65915 of Government Code allow for expanded incentives and bonuses for housing projects that provide 100% affordable units, with up to 20% moderate income housing, with additional bonuses, incentives and flexibility for projects within a half-mile of a major transit stop.

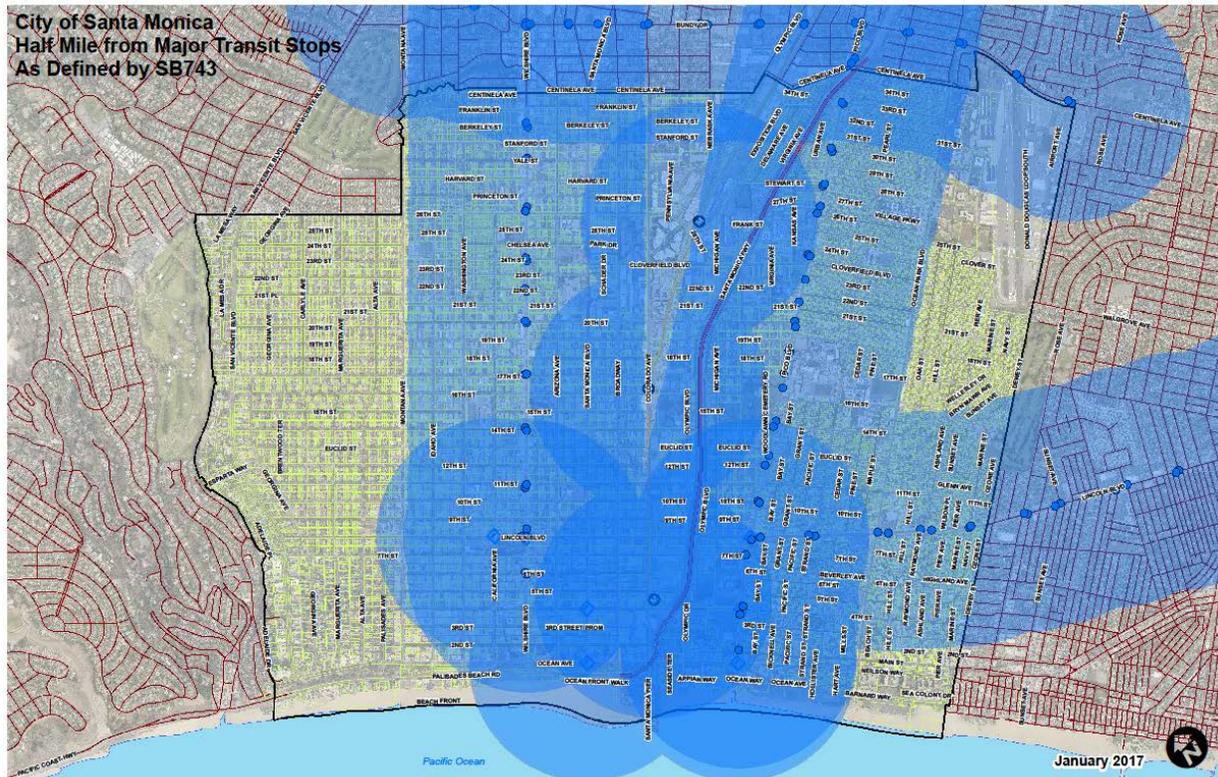
Increased Density Bonus and Additional Incentives for Eligible Affordable Housing Projects

Previous state density bonus law allowed developers to seek a density bonus and concessions if they agreed to construct a certain percentage of units at very low, low, or moderate-income levels. The previous law, based on a sliding scale, incentivized development inclusive of affordable housing, up to a certain percentage less than 100%, at which point no additional bonuses or incentives were offered for going above and beyond. A maximum bonus of 35% was offered for projects providing 11% of units at very low-income, 20% at low-income, or 40% at moderate-income, with a lower bonus offered for a lower percentage of affordable units. Further, projects were entitled to be granted between one and three concessions or incentives, also based on a sliding scale.

In addition to these existing bonuses, the recently adopted AB 1763 now requires cities to offer developers of housing projects that provide 100% of the total units as affordable, with up to 20% available to moderate-income households, additional density bonuses that go beyond the traditional sliding scale of density bonuses. These 100% affordable projects are entitled to receive up a maximum bonus of 80%, or if the project is within a half-mile of a major transit stop, no limit to density. Under AB 1763, these 100% affordable housing project are entitled to up to four incentives or concessions, and if the project is within a half-mile radius of a major transit, the projects are also entitled to an additional three stories, or 33 feet. Figure 1 shows the areas of the city that are within a half-mile radius of a major transit stop.

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Figure 1: Map of areas within half-mile of major transit stop



Additionally, to incentivize the development of affordable special needs and supportive housing projects, AB 1763 prohibits cities from imposing a parking minimum requirement for these types of special housing projects.

Reconsideration of State Density Bonus Implementation in Commercial Zones – Issues for Further Study

The LUCE established a tiered land use system built on the premise that projects seeking additional height and FAR above a base must provide additional community benefits. At the time the LUCE was adopted, the City conducted feasibility analyses demonstrating that Tier 1 housing projects compliant with the AHPP were feasible. The Zoning Ordinance implemented the LUCE land use system through the provision of bonuses for housing projects that complied with the AHPP in commercial zones (Table 2) and also a regulatory system of community benefits for Tier 2 projects pursuant to SMMC Chapter 9.23.

Table 1: Percentage bonus for housing projects in existing Zoning Ordinance

Zone	Tier 1	Tier 1 AHPP	Tier Bonus
	FAR	FAR	FAR
MUBL	1.25	1.50	20.0%
MUB	1.25	1.50	20.0%
GC (SM)	1.00	1.25	25.0%
GC (PICO/LINCOLN)	1.25	1.50	20.0%
NC	1.25	1.50	20.0%
NC (MAIN)	0.75	1.00	33.3%
NC (OP/MONTANA)	0.75	1.00	33.3%
HMU	1.50		
OF	1.50		
LT (East)	1.25	1.50	20.0%
LT (West)	1.25	1.50	20.0%
NV	1.75	2.25	28.6%
BC (Promenade)	1.75	2.25	28.6%
BC (2nd/4th)	1.75	2.25	28.6%
TA	1.75	2.25	28.6%
OT	1.75	2.25	28.6%
WT	1.50	1.50	0.0%
BTV	1.75		
CAC	1.00		
MUC	1.50		

Zone	Tier 1	Tier 2	Tier Bonus
	FAR	FAR	FAR
MUBL	1.25	1.75	40%
MUB	1.25	2.25	80%
GC (SM)	1.00	1.50	50%
GC (PICO/LINCOLN)	1.25	2.00	60%
NC (100%)	1.25	2.00	60%
NC (MAIN, 100%)	0.75	1.25	67%
NC (OP/MONTANA, 100%)	0.75	1.25	67%
HMU	1.50	2.50	67%
OF	1.50	2.00	33%
LT (East)	1.25	2.25	80%
LT (West)	1.25	2.75	120%
NV	1.75	3.50	100%
BC (Promenade)	1.75	2.75	57%
BC (2nd/4th)	1.75	3.50	100%
TA	1.75	3.50	100%
OT	1.75	2.75	57%
WT	1.50	2.25	50%
BTV	1.75	2.00	14%
CAC	1.00	1.00	0%
MUC	1.50	1.70	13%

In light of updates to State density bonus law since the LUCE, Council directed staff to reconsider how State density bonus law is integrated into the City's development regulations for commercial districts.

As such, staff reviewed density bonus law in the context of the Affordable Housing Production Program and the provision of housing bonuses already included in the Zoning Ordinance and identified the following two fundamental challenges that warrant further study:

- How to apply State "density bonus" when all of the City's commercial zones do not have a set maximum allowable density
- Ensuring a consistent and transparent framework to evaluate requests for incentives and concessions

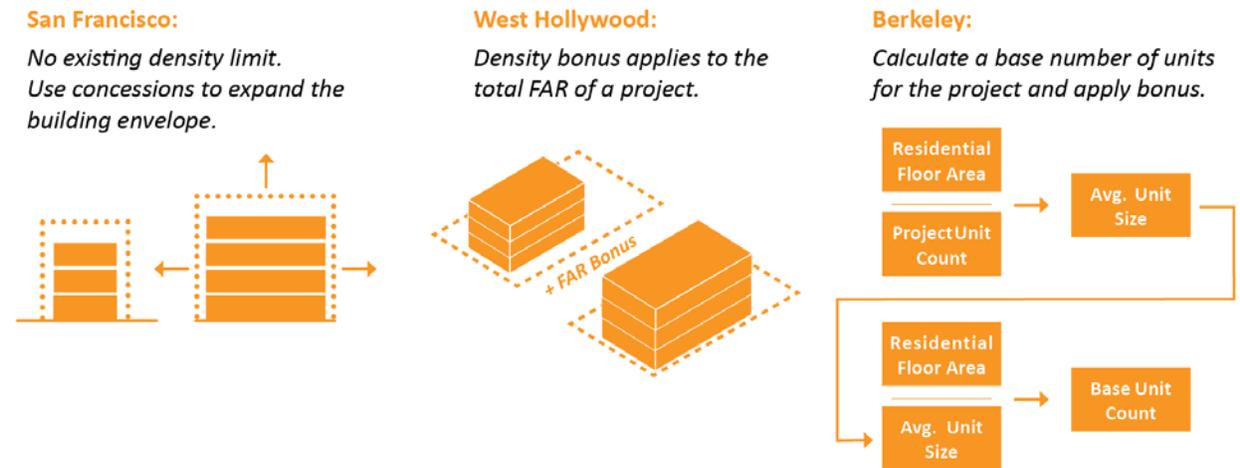
Santa Monica's unique tiered land use system dictates that projects that are granted density bonuses are also required to comply with all local requirements, including increased community benefits for affordable housing and impact fees if, by applying the bonus, the project exceeds Tier 1 maximum allowable height and density.

Applying State Density Bonus when No Maximum Allowable Density Exists

Within commercial zones, the City establishes development standards such as Floor Area Ratio, setbacks, and setbacks that regulate building form instead of establishing finite density limits on number of dwelling units (typically expressed in units/acre). The State density bonus law provides no guidance as to how to apply the density bonus to this kind of a situation. In order to research this issue further, staff conducted a review of peer cities that regulate development through building form instead of through density. A summary of peer cities is provided in Attachment B. What became apparent is that there are significant variations in how each jurisdiction chooses to implement State density bonus law in areas where no maximum controls on density exist. Figure 2 provides a graphic summary of the variations that are potential implementation approaches for the City to consider.

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Figure 2: Graphic comparison of how density bonus is applied in peer cities without maximum allowable density



San Francisco Model	West Hollywood Model	Berkeley Model
This model does not have any clear standards on what increases are appropriate for a particular project, leading to less clarity and potentially less consistency in the application of density bonus	As the purpose of a density bonus is to provide more housing, staff is concerned that this results in the potential bonus for commercial FAR as well. The Zoning Ordinance does not currently contain separate FAR limits for residential and non-residential development.	Council held extensive discussions regarding establishing a minimum unit size and voted to not adopt such a provision so there is not standardized unit size could be used. In Berkeley’s approach, the “average unit size” will change with every project leading to less clarity in the application of density bonus

As noted, each system has potential benefits and challenges that will be considered as part of the housing policy work plan in the context of the City’s land use scheme as a whole. Indeed, the cities of Berkeley and Walnut Creek consider updates to their density bonus ordinance to be multi-phase undertakings and not only a simple mathematical exercise.

Ensuring a Consistent and Transparent Method for Determining Appropriate Concessions and Incentives

In reviewing the above approaches, the City will also need to consider how to review concessions and incentives to ensure consistency across all projects seeking a density bonus in areas where no maximum controls on density exist. Where density controls exist, a developer may be able to seek increased height or FAR as an incentive to achieve “identifiable and actual cost reductions to provide for affordable housing costs” associated with the project. If an applicant were to receive increased FAR in the place of a density bonus where density controls do not exist and were to request additional FAR and/or height as an incentive or concession, questions would arise as to whether this is permitted under the State density bonus law and, if so, how to calculate whether the increased FAR

was indeed tailored to achieving cost reductions for the production of affordable housing. Staff is evaluating how to integrate this provision into the Zoning Ordinance so that applicants and the community have clear expectations.

Next Steps

Given the various considerations detailed above, staff is proposing a measured approach to ensure that any amendments are considered within the context of Council's direction to incentivize housing production but more specifically, to incentivize 100% affordable housing. While there is a need to move expeditiously to ensure timely completion of the Housing Element update, staff is concerned that moving forward with density bonus implementation for market-rate projects, absent any consideration for how such actions may affect the ability to accommodate a significant allocation of affordable housing units, would negate the advantage provided to 100% affordable housing projects per AB1763. Staff has established a housing policy work plan intended to lead towards a certified Housing Element. This work plan prioritizes the support of 100% affordable housing in the immediate term with other policy matters related to housing production, such as reconsideration of how State density bonus law is implemented, identified for further analysis and recommendations by the beginning of 2021. This is not intended to be a multi-year effort but a phased approach to include density bonus reconsideration as part of a comprehensive housing package that is intended to incentivize housing production and particularly, maximize support for 100% affordable housing

Environmental Analysis

The proposed amendments to the zoning ordinance to update provisions related to large family daycares, accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"), and density bonus for consistency with State law are categorically and statutorily exempt from the provisions of the California Environmental Quality Act (CEQA). Large family daycares are statutorily exempt from CEQA pursuant to Section 15274 of the CEQA Guidelines (Large Family Daycare), which provides that "CEQA does not apply to establishment or operation of a large family daycare home, which provides in-home care for up to fourteen children, as defined in Section 1596.78 of the Health and Safety Code." The proposed changes related to ADUs are statutorily exempt under Public Resources Section 21080.17 as an ordinance implementing Government Code Section 65852.2, and the proposed changes related to ADUs and JADUs are further statutorily exempt under Section 15282(h) of the CEQA Guidelines as an ordinance regarding second units in single-family and multi-family residential zones. Additionally, the recommended amendments to implement new State laws regarding ADUs and JADUs are exempt from CEQA. Per State law, ADUs and JADUs are approved ministerially and, therefore, ADUs and JADUs are statutorily exempt from CEQA pursuant to Section 15268 (Ministerial Projects) of the CEQA Guidelines. In addition, ADUs and JADUs are categorically exempt from CEQA pursuant to Sections 15301 (Class 1 Existing Facilities) and 15303 (Class 3 New Construction of Small Structures) of the CEQA Guidelines. Lastly, revisions to the Zoning Ordinance to implement the State Density Bonus law modify the criteria and incentives offered to qualifying developments, but do not authorize construction not already permitted under the City's existing codes. Moreover, most of the incentives and concessions the City has designated as a matter of

right are already authorized by the Zoning Ordinance, although certain of these incentives currently require discretionary approval. Further, each individual project will be subject to its own environmental review. Consequently, changes are exempt from CEQA pursuant to Section 15061(b)(3) of CEQA Guidelines since it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment. Further, density bonuses are categorically exempt pursuant to Section 15332 of the CEQA Guidelines (Class 32 In-Fill Development). Class 32 exempts projects including density bonus projects that are consistent with the general plan and applicable zoning designation and regulations. There are no other exceptions to exemptions that would preclude the use of the Class 32 exemption for the recommended amendments.

Alternative Actions

In addition to the recommended action, the Planning Commission could consider the following with respect to the project:

- A1. Revise the proposed amendments and recommend adoption to the City Council.
- A2. Recommend that the City Council not adopt the proposed amendments.

Zoning Text Amendment Findings

1. The proposed amendments to the text of Zoning Ordinance to update provisions related to large family daycares, accessory dwelling units, and density bonus for consistency with State law are consistent with the General Plan and any applicable Specific Plan in that the amendments implement the LUCE policies to support childcare, housing production, and 100% affordable housing through incentives for process and development potential. Specifically, Policy CE9.1 calls for the support of large family childcare homes by encouraging their harmonious integration into neighborhoods and to provide incentives such as streamlines processing and permit regulations. With respect to accessory dwelling units, the LUCE specifically establishes that accessory dwelling units are permitted in single family housing designations. Further, Policies LU11.3 and LU11.6 seek to provide incentives for affordable housing with a focus on process streamlining, bonuses, and flexible standards. The proposed amendments also support housing production through process incentives for projects that comply with objective standards in the zoning ordinance.
2. The proposed amendments are consistent with purpose of the Zoning Ordinance to update provisions related to large family daycares, accessory dwelling units, and density bonus for consistency with State law promote the growth of the City in an orderly manner and to promote and protect the public health, safety, and general welfare in that the proposed changes ensure consistency with State law while maintaining the existing policies, standards and regulations in the Zoning Ordinance that promote the public health, safety, and general welfare.

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Attachments

- A. Planning Commission Resolution 20-007, Zoning Ordinance
- B. Summary Comparison of Density Bonus Systems in Peer Cities

Attachment A

Resolution 20-007 (PCS)

Attachment B

Summary Comparison of Density Bonus Systems in Peer Cities