



CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

AGENDA ITEM

Report: Initiation of code amendments to Chapter 30.36 (Density Bonus Incentives)

1. City Council Motion to initiate code amendments to Chapter 30.36 of the Glendale Municipal Code (Density Bonus Incentives).

COUNCIL ACTION

Item Type: Action Item

Approved for October 5, 2021 **calendar**

EXECUTIVE SUMMARY

The following report sets forth and analyzes various options for City Council consideration regarding amendments to Chapter 30.36 (Density Bonus Incentives), including amendments related to application requirements/processing and hearings. Consistent with direction received at the July 2021 City Council meeting, alternatives discussed include providing an option to select from a menu of incentives designed to reduce the overall mass and scale of density bonus projects while streamlining the approval process for applicants. In addition to the menu, several options are provided related to requiring public hearings. The report also provides information regarding an optional amendment to require an applicant to prepare and/or pay for and submit a financial analysis as evidence to support the requested incentive. The report also discusses the option to change the way setback incentives are grouped and makes some recommendations for any such change. Lastly, the report outlines changes to the City's ordinance (GMC Chapter 30.36) that are required in order to align the GMC with recently amended state Density Bonus Law.

COUNCIL PRIORITIES

Informed and Engaged Community: A potential outcome of the optional amendments to Chapter 30.36, Density Bonus Incentives, would be additional opportunities for the community to comment on standards for density bonus projects (via a menu) and/or provide testimony at hearings designed to make the process more transparent and inclusive of the community.

Balanced Quality Housing: The objective of the amendments to Chapter 30.36, Density Bonus Incentives, are not only limited to process transparency, but also include the development of better design in density bonus projects through process incentives. The development of high quality housing is an important goal, especially with respect to density bonus projects, which contain affordable and market rate housing in the same housing development.

RECOMMENDATION

Community Development Department staff respectfully recommends that the City Council initiate amendments to Chapter 30.36 (Density Bonus Incentives) of the Glendale Municipal Code (GMC) to bring the City's Code into compliance with recent state law amendments to California Government Code Sections 65915, *et seq.* (Density Bonus Law). Staff is also recommending that City Council provide direction regarding additional optional amendments to alter the review process for density bonus projects seeking incentives under Chapter 30.36, including a menu of concessions, financial/cost analysis and public hearings.

BACKGROUND

On July 13, 2021, staff provided the City Council and Housing Authority with a presentation on the Density Bonus law, how it is applied in Glendale, and options for amending the City's density bonus ordinance and process. Alternatives discussed included providing incentives through a menu of concessions that might reduce the overall mass and scale of a project while streamlining the approval process for developers. There are also changes to the City's ordinance (GMC Chapter 30.36) that are required in order to align the GMC with recently amended state Density Bonus Law. Council directed staff to bring back a report outlining options for amendments to Chapter 30.36 of the Zoning Code related to Density Bonus Incentives to include a menu of incentives, requirement of a financial/cost analysis to support a request for an incentive, as well as options for hearings on density bonus applications and other miscellaneous process changes.

ANALYSIS

Options for Menu of Incentives/Concessions

With the exception of FAR, staff is recommending a menu option that allows a 20% increase/decrease in maximum/minimum code standards, which is similar to the Administrative Exception (AE) process (sometimes referred to as a minor variance). AEs are processed at the Director level without requiring a public hearing. Staff is recommending that a project be allowed up to 4 menu items without a public hearing, and that decisions be made by the Director. Staff recommends that the process include a policy to post pending decisions 10 days prior to the Director decision, similar to the current processes for Administrative Design Review (ADR) and Administrative Use Permit (AUP) decisions. Optional noticing could include those within a 500 foot mailing radius, which is not currently required by code for density bonus projects, but is for ADR and AUP projects. Posting of the site is also a possible option. Making the process similar or the same as ADR and AUP cases would be more transparent to the community and more consistent with existing processes for ADR and AUP.

Staff recommends that projects that request more than 4 "on menu" items, or larger deviations than those included in the "on-menu" items be considered "off-menu", triggering the need for a public hearing before the Planning Hearing Officer (PHO). This

hearing would be noticed, consistent with all other cases that go before the PHO, including mailing public hearing notice to owners and occupants within 500 feet of the subject property, posting the site and publishing of notice in the Glendale Independent a minimum of 10 days prior to hearing.

Recommended Menu Items

- Floor Area Ratio (FAR)

- 0.5 increase

Zone	R-3050	R-2250	R-1650	R-1250
Maximum Permitted	0.65	0.85	1.0	1.2
With Incentive	1.15	1.35	1.5	1.7

- Lot Coverage

- 20% increase

Zone	R-3050	R-2250	R-1650	R-1250
Maximum Permitted	50%			
With Incentive	60%			

- Setbacks

- Street Front
 - 20% decrease

Zone	R-3050	R-2250	R-1650	R-1250
Min./Avg. Required (feet)	25	1 st Floor - 20/23 2 nd and 3 rd Floor - Not < 23/26		
With Incentive	20	1 st Floor - 16/18 2 nd and 3 rd Floor - Not < 18/21		

- Street Side and Interior
 - 20% decrease

Zone	R-3050	R-2250	R-1650	R-1250
Min./Avg. Required (feet)	1 st Floor - 5/8 2 nd Floor - Not < 8/11 3 rd Floor - Not < 11/14			
With Incentive	1 st Floor - 4/6 2 nd Floor - Not < 6/9 3 rd Floor - Not < 9/11			

- Interior (when abutting ROS, R1R or R1 Zone)
 - 20% decrease

Zone	R-3050	R-2250	R-1650	R-1250
Min./Avg. Required (feet)	1 st Floor - 8/11 2 nd Floor - Not < 11/14			

	3 rd Floor - Not < 17/20
With Incentive	1 st Floor - 6/9 2 nd Floor - Not < 9/11 3 rd Floor - Not < 14/16

- Height and Stories
 - 20% for height and 1 additional story

Zone	R-3050	R-2250	R-1650	R-1250
Maximum Permitted	41 Feet* and 3 Stories			
With Incentive	49.2 Feet and 4 Stories			

*Max. Height requires min. roof pitch of 3:12

- Landscaped Open Space
 - 20% decrease

Zone	R-3050	R-2250	R-1650	R-1250
Minimum Required	30%	25%		
With Incentive	24%	20%		

Options for Grouping Incentives/Waivers for Setbacks

Staff currently treats all requests for setback incentives/waivers as a single incentive. What this means is that if a project is seeking a reduction in the front, street front, and/or interior setbacks, staff treats these requests as a single concession, regardless of the number of deviations for each of the three setbacks. Several members of the public have commented on this practice, and requested the City Council to direct staff to treat each deviation from a setback requirement as a separate incentive or waiver. For example, some commentators have advocated for treating a request to reduce setbacks for the street front, street side and interior setbacks as three separate incentives/waivers. Based on past applications for density bonuses and incentives/waivers that have been sought in Glendale, most projects that propose the level of affordability required by state law for three incentives need incentives from all three types of setbacks. In fact, as shown in the table below, there are several setback standards in Title 30, Chapter 30.11, not just for the building as a whole, but for each floor of a building; thus, requiring each setback standard to be treated as a single concession or waiver would require a vast majority of the density bonus projects to seek multiple waivers, in addition to incentives, for just setbacks.

As an example, a project requesting an incentive from the interior setback under current practices would likely require six incentives/waivers if the process is changed, since all three floors have both a minimum and average setback requirement. For this reason, staff is recommending that setbacks continue to be considered a single concession. Alternatively, staff recommends that only street front setbacks be considered a separate and distinct incentive from interior setbacks, but that interior setbacks and street side setbacks continue to be treated as one incentive, since interior and street side setbacks are largely the same.

Treating all setbacks as individual incentives/waivers would require virtually every project proposed in a multi-family zone to request waivers in addition to three incentives (if allowed based on level of affordability), triggering the need for a public hearing before the PHO. Due to the complexity of setbacks in multi-family zones, where the majority of density bonus projects are proposed, requiring all three setbacks and variations by floor to be considered as separate incentives/waivers may be construed by some to run counter to the underlying policy goals of the state Density Bonus Law, which requires the law to be “interpreted liberally in favor of producing the maximum number of total housing units” (Cal. Gov’t Code § 65915 (r)), as well as requirements in the housing element to remove constraints to housing development for the production of affordable housing.

Required Setbacks	Zoning District			
	R-3050	R-2250	R-1650	R-1250
Street Front	25' Min.	1 st Floor - 20' Min. Avg. of 23' 2 nd and 3 rd Floor - Not < 23' Avg. of 26'		
Street Side	1 st Floor - 5' Min. average of 8' 2 nd Floor - Not < 8' Avg. of 11' 3 rd Floor - Not < 11' Avg. of 14'			
Interior (side and rear)	1 st Floor - 5' Min. average of 8' 2 nd Floor - Not < 8' Avg. of 11' 3 rd Floor - Not < 11' Avg. of 14'			
Interior (side and rear) Abutting Single Family Zone	1 st Floor - 8' Min. average of 11' 2 nd Floor - Not < 11' Avg. of 14' 3 rd Floor - Not < 17' Avg. of 20'			

Option to Eliminate Additional Zoning Code Standard’s Application to Density Bonus Projects

In addition to code standards in GMC 30.11 (setbacks), projects in areas zoned multi-family are required to provide additional common open space when the lot has greater than 90 feet of frontage and the project is seeking density above the zoning standards. For example, lots zoned R-1250 are entitled to one dwelling unit for every 1,250 square feet of lot area. Lots with more than 90 feet of frontage are entitled to one dwelling unit for every 1,000 square feet of lot area if additional common open space is provided consistent with GMC section 30.31.020 (7) identified below.

30.31.020(7). Additional open space requirements for the R-2250, R-1650, and R-1250 zones. On a lot with a minimum width of ninety (90) feet and with a density exceeding the maximum density permitted by code for lots with less than ninety (90) feet in width, an additional nine hundred (900) square foot open space area shall be provided contiguous to a street front/side setback area. For each additional foot of lot width thereafter, or minor fraction area thereof, an additional twenty (20) square feet of such open space area shall be provided.

Said area may be located on top of a subterranean or semi-subterranean garage area and may be “common outdoor space”; may be landscaped; shall be located within the fifty (50) percent of the lot depth/width nearest the front property line or street side property line; shall be visible from the public street; shall not include “private outdoor space”; and shall not include or be located within any required minimum interior, street front or street side setback area. Planter walls not exceeding a height of thirty (30) inches and railings shall be allowed in this area. The design of such additional open space area shall be integrated with the landscaping of the contiguous street front/side setback area. Second and third floors may not project into any required additional open space area and shall be proportionally stepped back from said area a minimum of three (3) feet for the second floor and a minimum of six (6) feet for the third floor to preserve the front and side elevation change-of-planes encouraged by this title.

Staff is recommending that the additional common open space requirement no longer apply to projects seeking a density bonus under Chapter 30.36. Eliminating this code requirement, only for projects seeking a density bonus, could potentially reduce overall height and massing of new projects by allowing development to utilize more site surface area rather than by increased height to provide the additional units a project is entitled to under state density bonus law. In addition, more roof surface area would increase a project’s ability to comply with open space requirements by providing rooftop open space areas.

Options for Public Hearing

There are several options to consider regarding requirements for public hearings for density bonus applications. They include:

- Conduct a public hearing for all density bonus applications regardless of requested concessions and/or waivers;
- Continue to allow Director to render decisions on applications with only those incentives a project is entitled to consistent with state density bonus law and continue to hold public hearings before the PHO where an application is seeking waivers;
- Hold public hearings before the Planning Hearing Officer (PHO) where an application is seeking “off menu” incentives and/or more than the allotted number of “on-menu” incentives, as determined by City Council; and
- Process density bonus applications with only those incentives a project is entitled to consistent with state density bonus law similar to an ADR or AUP application including necessary noticing.

Under the Density Bonus Law, local agencies must grant eligible density bonus applicants certain incentives or concessions based on the level of affordability provided. For example, a project that seeks and agrees to restrict 15% of the units as very low income units is entitled to a 50% density bonus and three incentives. Incentives include “a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed . . . minimum building standards . . .” Cal. Govt. Code § 65915(k)(1). A local agency must grant a requested

incentive or concession if the applicant meets the eligibility criteria, unless it can make written findings, based on substantial evidence, of any of the following:

- (A) The incentive or concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units (in other words, the City would be required to show that the incentives do not reduce the costs to build the affordable units with the density bonus being provided);
- (B) The incentive or concession would have a specific, adverse impact upon public health or safety, or the physical environment or any real property listed in the California Register of Historical Places 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 incentive or concession would be contrary to state or federal law.

The City has the burden to establish the evidence to make any of these denial findings. Additionally, a finding of a “specific, adverse impact upon public health or safety” cannot be based on generalized findings but must be 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 complete.” Cal. Gov’t. Code § 65589.5. These findings are, by legislative design, intended to be difficult to meet.

In addition to density bonuses and incentives, an applicant may request a waiver of a development standard if the applicant can establish that the particular development standard will physically preclude the development of the project with the density bonus and required incentives. The applicant has the burden to establish that the development standard will preclude the development with the requested density bonus and incentives, and a local agency must make three required findings to approve a requested waiver: (e.g., it must find that there is substantial evidence: 1) that the development standard will physically preclude the development with the density/incentives requested, 2) that the development standard, if waived, will not have a specific adverse impact that cannot be mitigated, and 3) that the waiver will not be contrary to state or federal law).

Under GMC Section 30.36.040.A, the request for approval of a density bonus housing plan, including a density bonus, incentives or concessions, and/or parking concessions (*without a request for one or more waivers*) is reviewed by the Director of Community Development *without a public hearing*. At the time of the adoption of the City’s density bonus ordinance in 2006, it was determined that the above-stated denial criteria would make it difficult, if not impossible in most cases, to deny requested incentives, and that the discretion of a hearing body would be substantially limited and unable to take into account traditional factors in discretionary review such as neighborhood compatibility, aesthetics, or generalized concerns of traffic, noise, etc. Thus, at the time of adoption of the City’s original density bonus ordinance, the Council decided to require requests for the incentives (without waivers) processed without a public hearing, as it concluded

that having a hearing where the hearing officer body/officer has no discretion, or is severely restricted in its discretion, may lead to public confusion or frustration with the hearing process.

Pursuant to GMC Section 30.36.040.B, the request for approval of a density bonus housing plan, including a density bonus, incentives or concessions, and/or parking concessions *with a request for one or more waivers* must be reviewed by a hearing officer *with a public hearing*.

If a housing development is requesting waivers as well as a variance related to a use, the Director of Community Development may authorize the entitlement requests to be considered by the Planning Commission rather than both the hearing officer and the planning commission. Requests in a redevelopment project area, as adopted by the legislative body/Glendale redevelopment agency, must be reviewed by the Glendale City Council with a public hearing. Also, pursuant to a recently enacted urgency ordinance, requests for a density bonus, with or without incentives or waivers, for 100% affordable housing developments funded or initiated by the City or the Housing Authority, as well as requests for a density bonus above the maximum allowed under Density Bonus Law, must be heard by the City Council with a public hearing. Notice for this hearing is required to be the same as that given for a variance in Chapter 30.61.

Futhermore, the density bonus provisions of Chapter 30.36 do not modify the requirement that each housing development obtain design review approval under GMC Chapter 30.47 or the design review process for those projects in redevelopment project areas; provided, however, the review authority shall not, through the design review process, reverse, negate, or limit any density bonus, incentive or concession, waiver or reduction in development standards or parking concession granted pursuant to the GMC.

As outlined above, the GMC does not provide for a hearing when a density bonus project is only seeking incentives. As a result, there is no vehicle to provide notice to the public regarding the pending application for the mandatory density bonus and the requested incentives prior to rendering of the deicison. Recently, some members of the community have requested the City provide advance notice for such applications prior to the rendering of a decision, and per City Council direction to provide such notice, beginning in June of 2021, density bonus applications that do not require a hearing are and will continue to be noticed on the Community Development Department/Planning Division website. Projects that are requesting waivers or other project-related discretionary approvals will continue to be heard and decided at a duly noticed public hearing, and the notices for those hearings will include information on the density bonus application, as per standard practice.

Council may choose to continue this modified noticing process/no hearing for density bonus projects seeking just incentives, or Council may chose to direct staff to amend the GMC to require all density bonus projects, whether those seeking just incentives or those seeking both incentives and waivers, to undergo the same public noticing and hearing requirements. Alternatively, if Council directs staff to adopt a menu of incentives/concessions, Council may elect to allow projects seeking incentives off of the

menu (both type and maximum number) to continue to not be required to proceed to a hearing (and be decided by the Director), but those seeking incentives not on the menu to be required to proceed to a public hearing before the PHO.

Financial/Cost Analysis Requirement for Requested Incentives

At the July 2021 meeting the City Council requested that a financial/cost analysis be required for density bonus project applications requesting incentives, in order to provide the review authority with information related to whether or not the incentive requested would result in identifiable and actual cost reductions to provide for affordable housing costs. The City of Pasadena, for example, requires this type of analysis prior to considering a request for an incentive.

In order to deny a request for an incentive, the City must demonstrate that the incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs (Cal. Gov't Code § 65915 (k)(1-3); and the City must demonstrate that the density bonus allowed by Section 65915(f) can be achieved if the requested incentive is not provided.

Pasadena performs these two distinct analyses to evaluate the specific incentive being requested by the applicant under the financial evidence requirements imposed by Government Code Section 65915(d)(1)(A). The first test is used to determine if the proposed incentive results in identifiable and actual cost reductions. The second test compares the net cost associated with providing the requisite number of affordable units to the benefits generated by the proposed density bonus and incentive.

The financial analyses are used to determine whether the proposed incentive(s) result in identifiable and actual cost reductions, and whether the net cost to provide affordable units is not fully recouped from the benefits associated with the proposed density bonus and incentive(s).

While the state law may be construed to limit the ability of cities to require density bonus applicants to provide studies on the economic necessity of an incentive (e.g. a *pro forma*), it is staff's assessment that the City may legally require applicants to pay for the cost for the City to perform an analysis as to whether the requested incentive will not result in identifiable and actual cost reductions. Applicants can also be required to provide any requisite information/data necessary to perform the analysis and can be permitted to submit any other information the applicant wishes in support of the application. Staff recommends that such an analysis only be required if a project goes "off-menu". If the Council directs staff to require such financial analysis, staff would codify such an application requirement in either Chapter 30.36 or in the application requirement/checklist, and require the applicant to bear the cost of the City's preparation of such a report prior to any decision regarding the incentive can be made.

Recent 2020 & 2021 Amendments to State Density Bonus Law

Amendments to GMC 30.36 should also include the mandatory regulatory changes signed by Governor Newsom that took effect on January of 2021. Staff is suggesting adding a provision to the code that effectively would make any future changes retroactive pursuant to future modification or changes to the law enacted by the State until such time that Chapter 30.36 is amended by City Council.

Density Bonus Law was substantively amended in 2019 by Assembly Bill (AB) 1763, effective January 1, 2020. AB1763 added new affordability categories and substantially increased density bonuses for certain projects. The following is a brief description of the most significant provisions of Government Code Section 65915, including the 2019 amendments which became effective in January 2020:

- State law delineates specific levels of density bonus which are applicable to a housing development project which includes affordable housing units. In accordance with Government Code Section 65915, a housing development project which includes affordable units is eligible for a sliding scale of percentage bonus based on the number of affordable units proposed in the development and the level of affordability (from moderate to extremely low income). Until January of 2020, the maximum percentage of density bonus which could be achieved by a proposed project was a 35% bonus. However, AB 1763, substantially increased the maximum bonus which could be achieved by certain affordable projects.
- In accordance with AB 1763, a project proposed as a 100% affordable project with at least 80% of the units reserved for lower income households and 20% of the total units reserved for moderate-income households is entitled to a density bonus of 80%. If the development is located within one-half mile of a major transit stop, as defined in Public Resources Code §21155(b), the proposed project is entitled to an unlimited density bonus subject to some limitations.
- Moreover, in accordance with AB 1763, any such 100% affordable project is entitled to four incentives or concessions, and those which are located within one-half mile of a major transit stop are eligible to receive a height increase of up to three additional stories, or 33 feet. However, where a developer proposes such a project, the project is not eligible for waivers other than the additional height increase noted above, unless the City allows additional waivers.

Density Bonus Law was once more substantively amended in 2020 by Assembly Bill (AB) 2345, effective January 1, 2021. AB 2345 enhanced several existing incentives and made it easier for developers to obtain them.

- First, AB 2345 reduced the percentage of units that must be devoted to low income units for the developer to receive two or three concessions. Previously, projects needed to devote 20% of the base units to low income households to receive two concessions, and 30% to receive three concessions. Under the amended law, projects need to devote only 17% of the base units to low income households to receive two concessions, and only 24% to receive three concessions.
- Second, AB 2345 increased the maximum density bonus available from 35% to 50%. Under this change, if a project provides 15% very low income units, 24% low income units, or 44% moderate income units in a common interest development, the project may receive a density bonus of up to 50% above the otherwise maximum allowable density.

- Third, AB 2345 further relaxed parking standards applicable to density bonus projects. All projects can now take advantage of a reduction in the required vehicular parking ratio for 2 and 3 bedroom units (previously 2 and now 1.5 per 2 or 3-bedroom unit). Also, if a project provides at least 20% low income or 11% very low income housing and is within half a mile of a major transit stop, a city may not require the developer to provide more than 0.5 parking spaces per unit. Further, a city may not impose any parking requirement if the project is only rental units dedicated to low income households if within half a mile of major transit stop or if it is a senior housing development with paratransit or half a mile from access to fixed bus route.

Glendale's Local Ordinance (Density Bonus Incentives) Requires Updating to Conform to 2020 & 2021 State Law Amendments

The above amendments to the Density Bonus Law were enacted in a short two-year time span, the most recent of which went into effect in January of 2021. The City's ordinance implementing Density Bonus Law, GMC Chapter 30.36 (Density Bonus Incentives), was last amended in 2017 and does not incorporate amendments to the Density Bonus Law pursuant to AB1763 or AB2345. California cities are required to follow state Density Bonus Law when processing housing development applications seeking such bonus and incentives under the law, and, thus, staff has been applying the amendments enacted by AB 1763 and AB 2345 for applications received on or after January 1, 2021. Nevertheless, staff recommends that the City Council initiate amendments to the GMC to bring the Chapter 30.36 in conformity with California's Density Bonus Law.

STAKEHOLDERS/OUTREACH

N/A

FISCAL IMPACT

There is no fiscal impact associated with this report or with initiation of code amendments, other than the cost of staff time necessary to conduct the required environmental review, prepare the amendments, and return with the amendments for adoption by the Council following Planning Commission review.

ENVIRONMENTAL REVIEW

After undergoing appropriate environmental review, amendments to Chapter 30.36 would need to be reviewed by the Planning Commission and then brought to Council for adoption by a four-fifths vote. The required environmental review will be determined and completed prior to presentation of the amended ordinance to the Planning Commission for recommendation, and prior to the adoption of the ordinance by the Council.

CAMPAIGN DISCLOSURE

N/A

ALTERNATIVES

Alternative 1: The City Council may initiate amendments to GMC Chapter 30.36 to

bring the GMC into conformity with recent state Density Bonus Law amendments, as well as other optional amendments such as to require a public hearing for density bonus plan applications where a hearing is not currently required and/or an amendment to provide a menu of concessions that do not require a hearing.

Alternative 2: The City Council may initiate amendments to GMC Chapter 30.36 to bring the GMC in conformity with recent state Density Bonus Law amendments without changing any hearing process or provide a menu of concessions that do not require a hearing.

Alternative 3: The City Council may consider any other alternative proposed by staff.

ADMINISTRATIVE ACTION

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EXHIBITS / ATTACHMENTS

None.