



October 16, 2014

TO: All Staff
Other Interested Parties

FROM: Michael LoGrande *for MLC*
Director of City Planning

SUBJECT: **IMPLEMENTATION OF THE DENSITY BONUS ORDINANCE –
APPLICABILITY OF PRO FORMA FINANCIAL ANALYSES**

Discussions recently took place at the City Planning Commission regarding the use of pro formas or other types of financial analyses in conjunction with density bonus cases. In particular, a question arose regarding the potential requirement that applicants provide a pro forma when requesting “on-menu” incentives as part of the Density Bonus Ordinance [LAMC 12.22 (A)25]. Pro formas or other documentation are already required for requests for off-menu waivers or modification of development standards, per subsection (g)(3).

Density Bonus Law

With SB 1818 (2004), state law created a requirement that local jurisdictions approve a density bonus and up to three “concessions or incentives” for projects that include defined levels of affordable housing in their projects. In response to this requirement, the City created an ordinance that includes a menu of incentives (often called “on-menu” incentives) comprised of eight zoning adjustments that meet the definition of concessions or incentives in state law (CA Government Code Section 65915). Separately, the state also allows developers to request a waiver or modification from other development standards that preclude development of a density bonus project.

In order to grant approval of an on-menu incentive, the City utilizes the same findings contained in state law for the approval of incentives or concessions. With regard to the economic-related finding (c)(i), the City must approve an on-menu incentive unless it finds the incentive “is not required to provide for affordable housing costs.” This phrase has prompted the question of how the City can come to a decision on whether the on-menu incentive provides for housing costs without a detailed pro forma financial analysis. It is important to note that the finding does not require the incentive to offset affordable housing costs, or make the project economically feasible.

Analysis

The City's Density Bonus Ordinance requires "a pro forma or other documentation" with requests for off-menu incentives but has no such requirement for on-menu requests.

The City typically has the discretion to request additional information when it is needed to help make required findings. However, upon careful review, the City believes the level of detail provided in a typical pro forma is not necessary to make the on-menu finding in question (c)(i). This is primarily because each of the City's eight on-menu incentives¹ provides additional buildable area, which, if requested by a developer, can be assumed to produce additional project income and therefore provide for affordable housing costs. Each of the eight on-menu incentives responds to common types of regulatory relief the City was providing prior to the adoption of the ordinance. This further demonstrates the usefulness of these incentives to housing developers.

Conclusion

The Department concludes that a pro forma financial analysis cannot be required of applicants without a code amendment and that requesting such an analysis would result in little to no value for decision makers. This is because the on-menu incentives have been pre-evaluated to ensure they all provide for housing costs. A subsequent economic analysis at the project level is therefore not required for projects requesting solely on-menu incentives.

¹ The eight on-menu incentives allow for 1) reducing setbacks, 2) reducing lot coverage, 3) reducing lot width, 4) increasing floor area ratios (FAR), 5) increasing height, 6) reducing required open space, 7) allowing for an alternative density calculation that includes streets/alley dedications, and 8) allowing for "averaging" of FAR, density, parking or open space