

January 29, 2007

Mr. Steve McNally of Councilmember Kevin Faulconer's Office
City Council, Mayor, City Attorney, and DSD
202 C Street
San Diego, California 92101

Subject: Ministerial Deviations to Height, Setbacks, Parking, and Floor-Area-Ratio (FAR)
Item-331 Amendments Related to Affordable Housing Density Bonus (Citywide)
City Council Meeting, Tuesday, January 30, 2007
<http://clerkdoc.sannet.gov/legtrain/Dockets/dkt20070130>

References: Report No. 07-021 to the City Council, January 24, 2007
http://clerkdoc.sannet.gov/RightSite/getcontent/local.pdf?DMW_OBJECTID=09001451800f9881
Draft Changes to the Municipal Code
http://clerkdoc.sannet.gov/RightSite/getcontent/local.pdf?DMW_OBJECTID=09001451800f985e
Summary of Revisions to State Density Bonus Law Under SB1818 and SB 435
<http://www.laplayaheritage.com/Documents/CITY%20OF%20SAN%20DIEGO/densitybonussummary.pdf>

Dear Mr. McNally,

Thank you for speaking to us regarding our concern that, as written, the Amendments to the Affordable Housing Density Bonus will be misused as a loophole to get around the 30-foot Coastal Height Limit law among other quality of life laws in the city's Municipal Code. The following are excerpts from the proposed changes to the Municipal Code.

- 143.0740 Development Incentives for Affordable Housing Density Bonus Projects*
*(a) The City shall grant an incentive request by an applicant, to the extent allowed by **State law** as set forth in this Section.*
(1) An incentive means any of the following:
*(A) A **deviation to a development regulation**.*
(2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures
(b) Incentives shall be granted through Process One.

The Process 1, Ministerial Over-The-Counter Review has no requirements to notice neighbors within 300 feet, no appeal process to the Planning Commission or City Council, and no recourse regarding decisions made by clerks in the Development Services Department (DSD). Process 1, Ministerial Over-The-Counter Review will take decision making responsibilities away from communities and the City Council, and hand over power to developers in the name of "streamlining" the process. Ministerial versus Discretionary review of new development in the City of San Diego is a quality of life issue.

The above-referenced Summary of Senate Bill 1818 adopted as State Law on January 1, 2005 states "*the revised state law clarifies that the regulatory incentives or benefits that are required to be provided to augment the basic density bonus include parking, **height**, FAR [Floor-Area-Ratio], and **setbacks**.*"

Because of the limits included in the proposed ordinance, we do not have any problems with ministerial incentives for affordable housing to consist of lowering requirements for parking or the Floor-Area-Ratio (FAR). Section 143.0740 (d) provides for minimum standards and/or limits for parking requirements. The proposed code changes does not let an incentive consist of using street parking to count towards the on site parking requirements for affordable housing, as first envisioned and proposed by DSD in the seventh draft to the Housing Element.

We do however have a problem with incentives consisting of ministerial approval of deviations to **height** and **setback** requirements without limits written into the Municipal Code.

For example the new affordable housing density bonus regulation would have the following effect in the southeast end of La Playa which is zoned RM-3-9, 60 foot Maximum Height, 10 foot front and back setbacks, and 5 foot side setbacks. Development in this area is also restrained by the 30 foot coastal height limit. Only one studio of a ten unit complex would need to be affordable in order to get any incentive that the developer requests. As currently written, and after the new regulations gets approved by the Coastal Commission, the developer can request that the height limit be changed from the 30 foot coastal height limit to 100 plus feet (as an exaggeration). The only constraint as we see it would be parking. As we read it, the State Law would trump the city's Proposition D – 30 foot coastal height limit law after being approved by the Coastal Commission. This is what the San Diego Building Industry Association (BIA) wants. Just by City Council approval tomorrow, the city-wide implications to get rid of height and setback requirements not in the coastal zone would become effective immediately. East of Interstate 5, the lack of limits to the height deviation would immediately create high-rise communities were none were planned. This situation needs immediate attention.

MY SOLUTION

The situation of no limits to height and setback deviations needs clarification written into the Municipal Code. As an example, as a solution and to set limits, you may add that a ministerially approved height deviation is only for 10 additional feet instead of the no limit currently proposed. Or a ministerial approved setback deviation may be only a 1-foot or 5-foot setback, on one side only, instead of the open ended wording currently used.

As stated in the above-referenced staff Report No. 07-021, staff recommends that you *“Approve the amendments to the Land Development Code and the **City’s Local Coastal Program**... (Chapter 12, Article 6, Division 7).”* Page 4 of the staff report states, *“Implementation in areas within the Coastal Overlay Zone will become effective upon the unconditional certification of the regulations by the California Coastal Commission.”*

As mentioned on Page 33 of the docket, *“The proposed amendments to the Land Development Code would apply to the Coastal Zone, therefore the City Council’s decision requires **amending the City’s Local Coastal Program**. As a result, the final decision on the amendments to the Land Development Code and associated Local Coastal Program amendments will be with the California Coastal Commission. **The City of San Diego must submit the amendments to the Land Development Code as an amendment for certification to the Coastal Commission.** The amendment is not effective in the Coastal Zone until the Coastal Commission unconditionally certifies the amendment.”*

Proposed changes to the Coastal Development Permit Procedures (Chapter 12, Article 6, Division 7) have not been included in the staff report. In addition, changes to the Local Coastal Program have not been included in the staff report for review by the city council or members of the public. Please have staff give you the proposed changes to both Chapter 12, Article 6, Division 7 of the Municipal Code, and the Local Coastal Program. This lack of candor on this sensitive topic is very disturbing.

<http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter12/Ch12Art06Division07>

Please know that some in the development community and DSD are counting on everyone to overlook these particular loopholes. We only learned about the loopholes from a subcommittee meeting of the Sierra Club this last Saturday. Only after reviewing all the documents did we see the slight of hand. The same Municipal Code changes to allow ministerial approval of deviations to height and setback requirements were proposed a few years back, but were voted down by the City Council as not a good land use planning tool and not in the best interest of the citizens of San Diego. Community opposition to changing height restrictions is well documented in San Diego.

Please note that besides these two little loopholes which have very large, unintended consequences, we are very supportive of the new Affordable Housing Density Bonus changes to the Municipal Code. We do not want developers to use an incentive made in the name of the poor to line their pockets and change community character with ministerial approval. It would not be right. We hope you and Councilmember Faulconer agree.

If you have any questions, please do not hesitate to contact us.

Regards,

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