



MEMORANDUM

DATE: 3/14/2019
TO: Planning Commission
FROM: Julia Ayres, Associate Planner, via John Swiecki, Community Development Director
SUBJECT: **Study Session: Inclusionary Housing and Density Bonus Ordinance Update**

Background

The current 2015-2022 Housing Element of the General Plan and recently adopted State law require updates to the City's Inclusionary Housing and Density Bonus Ordinance (BMC Chapter 17.31, adopted in 2009). In this context, the Planning Commission has reviewed the current regulations, recent regulatory trends in neighboring jurisdictions, and other pertinent information over the course of five workshops and study sessions from July 2018 to January 2019.

In these workshops and study sessions, the Planning Commission provided consensus on the following aspects of the ordinance update:

- Reduce the minimum unit threshold for inclusionary housing from six units to five units.
- Utilize a percentage-based inclusionary requirement for rental and for-sale housing developments instead of the current sliding scale requirement (15% inclusionary requirement for rental housing developments) and include at least one alternative to constructing rental inclusionary units, pursuant to AB 1505.
- Create a density bonus incentive for small projects not eligible for bonuses under State density bonus law, and grant additional concessions or incentives than required by State law for projects that exceed the density bonus qualifications (pursuant to Housing Element Program H.B.5.a).

In addition to the above, staff has further modified the ordinance to break up the inclusionary housing requirements and density bonus requirements into separate Chapters (currently they are combined in Chapter 17.31) to ease their implementation. These revisions are reflected in the draft ordinance excerpts included in Attachment 1 and Attachment 2.

Affordable Housing Goals and Small Housing Projects

Since the last Planning Commission study session on January 24, 2019, some Commissioners have raised concerns that reducing the applicability of inclusionary requirements from six-unit projects to five-unit projects still would not result in additional affordable housing unit production, due to the predominantly small-scale (four or fewer units) of residential development

projects in Brisbane. It has been requested that staff explore lowering the inclusionary applicability to projects as small as two to three units.

To help contextualize this issue, staff from **21 Elements** will be present tonight to discuss how inclusionary requirements and in-lieu fees impact the economics behind housing developments, and provide a more detailed review of affordable housing policies in other San Mateo County jurisdictions tailored to smaller projects. 21 Elements is a countywide consortium of staff representing San Mateo's cities and the County that facilitates collaboration and sharing best practices related to housing policies and development. Their staff has worked with jurisdictions, non-profit organizations, and State agencies to help jurisdictions craft workable housing policies. Staff has also included a chart tracking the size of new housing projects built within the past five years in Brisbane to illustrate recent trends in Attachment 3.

Attachments:

1. Draft inclusionary housing ordinance
2. Draft density bonus ordinance
3. New housing projects built 2014-2019

ATTACHMENT 1

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Excerpts from Revised Draft Inclusionary Zoning Ordinance

17.31.030 - Inclusionary requirement.

- A. Applicability. The inclusionary requirements established in this section shall apply to all housing developments with five (5) or more dwelling units, except for the following:
1. Housing developments that are developed pursuant to the terms of a development agreement executed prior to the effective date of this Chapter, provided that such housing developments shall comply with any affordable housing requirements included in the development agreement.
 2. Housing development tentative maps or vesting tentative maps exempted by Government Code Section 66474.2 or 66498.1, provided that such maps shall comply with any predecessor ordinance in effect on the date the application for the map was deemed complete.
- B. Inclusionary Requirements.
1. For-sale Housing Developments. A for-sale housing development subject to the inclusionary requirements of this Chapter shall provide the following inclusionary lots or units, unless an alternative is approved pursuant to Section 17.31.050 of this Chapter:
 - a. A for-sale housing development with five (5) to ten (10) dwelling units or lots must provide fifteen percent (15%) of the units at affordable ownership costs for moderate income households.
 - b. A for-sale housing development of eleven (11) or more dwelling units or lots must provide ten percent (10%) of the units at affordable ownership costs for moderate income households and five percent (5%) of the units or lots at affordable ownership costs for lower income households.
 2. Rental Housing Developments. A rental housing development with five (5) or more dwelling units must provide fifteen percent (15%) of the units at affordable rents to very low income households, unless an alternative is elected pursuant to Section 17.31.050 of this Chapter.
- C. For purposes of calculating the number of inclusionary units required by this section, any calculations resulting in fractional units shall be rounded to the next larger integer. Additionally, any density bonus units authorized pursuant to Chapter 17.29 of this Code shall not be counted as part of the housing development.
- D. Contemporaneous construction of five (5) or more dwelling units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City land use approval, shall also be considered a single housing development. Construction shall be considered contemporaneous if any building permits are issued within five (5) years following the date of completion of any earlier construction.

17.31.040 - Inclusionary housing incentives.

- A. The following incentives shall apply to all housing developments that provide one or more inclusionary units in accordance with the provisions of this Chapter:
1. Single-family detached inclusionary units need not be constructed on lots the same size as the market-rate units in the same residential development, but the lots may be no smaller than the minimum standard for the applicable zoning district, except as provided by Section 17.31.060(B)(1) of this Chapter.

2. Inclusionary units may be smaller in size than market-rate units in the same residential development.
3. Inclusionary units may have different interior finishes and features than market-rate units in the same residential development, as long as the finishes and features are durable and of good quality, as determined by the Community Development Director.

17.31.050 - Alternatives to constructing inclusionary units for rental housing developments.

- A. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may, at the sole discretion of the applicant, elect to pay an in-lieu fee as established by resolution of the City Council, for each required inclusionary unit to the Brisbane Housing Authority's Low and Moderate Income Housing Fund, instead of constructing the inclusionary units within the residential development, pursuant to Government Code Section 65850(g). The timing of the in-lieu fee payment shall be as determined by the Planning Commission or City Council at the time of approval of the affordable housing plan pursuant to Section 17.31.060 of this Chapter.
- B. An applicant for a rental housing development subject to the inclusionary requirements of this Chapter may request City Council approval of one or more of the following alternatives as an alternative to constructing the inclusionary units within the housing development, as described within the affordable housing plan for inclusionary units prepared pursuant to subsection 17.31.060.B.3 of this Chapter:
 1. Off-Site Construction. The applicant may request to construct some or all of the inclusionary units at a location within the City outside of the residential development. Off-site inclusionary units shall be located on sites that are compatible with adjacent land uses, appropriately zoned for the intended residential development, and are in proximity to or will provide access to employment opportunities, urban services, major roads or other public transit facilities.
 2. Dedication of Land. The applicant may dedicate land within the City to the City or another public entity that provides affordable housing that is suitable for affordable housing development. The land shall meet all of the requirements of Government Code Section 65915(g). The value of the land shall be not less than the sum of the in-lieu fee that would be due under subsection A.1 of this Section 17.31.050. The valuation of any land offered in-lieu shall be determined by an appraisal made by an appraiser mutually agreed upon by the City and the applicant. Costs associated with the appraisal shall be borne by the applicant.
 3. Funding of Affordable or Special Needs Housing Project. The applicant may make a contribution to a special needs housing project or program or other affordable housing project in the City in an amount equivalent to the in-lieu fee payment due under subsection A.1 of this Section 17.31.050.
 4. Other Alternatives. The City Council may approve other alternatives to the construction of new inclusionary units. Alternatives may include, but are not limited to, acquisition and rehabilitation of inclusionary units, conversion of existing market-rate units to inclusionary units, or construction of special needs housing projects or programs (shelters, transitional housing, etc.).

17.31.070 – Adjustment or reduction of inclusionary housing requirement.

- A. An applicant may request City Council approval of an adjustment or reduction of the inclusionary housing requirements of this Chapter if an applicant demonstrates that the requested adjustment or reduction would better implement the goals, objectives, and policies of the City's general plan

housing element, which encourages the provision of housing affordable to a variety of household income levels, seniors, and persons with disabilities. The City Council, in its sole discretion, will determine whether to approve the applicant's request based on the City's progress in meeting its housing goals, objectives, and policies at the time the request is made.

- B. Any request for an adjustment or reduction under this section shall be submitted concurrently with the affordable housing plan required by Section 17.31.060 of this Chapter. The request for a reduction or adjustment shall set forth in detail the factual basis for the adjustment or reduction.

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ATTACHMENT 2

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Excerpts from Revised Draft Density Bonus Ordinance

17.29.030 - Density bonuses.

- A. The City shall grant a density bonus, incentives and concessions, waivers or reductions in development standards, and/or modified parking standards requested by applicants for approval of a housing development project of at least five units, to the extent required pursuant to Sections 65915 and 65915.5 of the Government Code, as may be amended over time.
1. A developer of a housing development containing between two (2) and four (4) dwelling units or lots may request City Council approval of a density bonus as shown in Table 17.29.030. The City shall waive or reduce any development standard that may preclude development of such a project subsection B of this Section 17.29.030.

Table 17.29.030

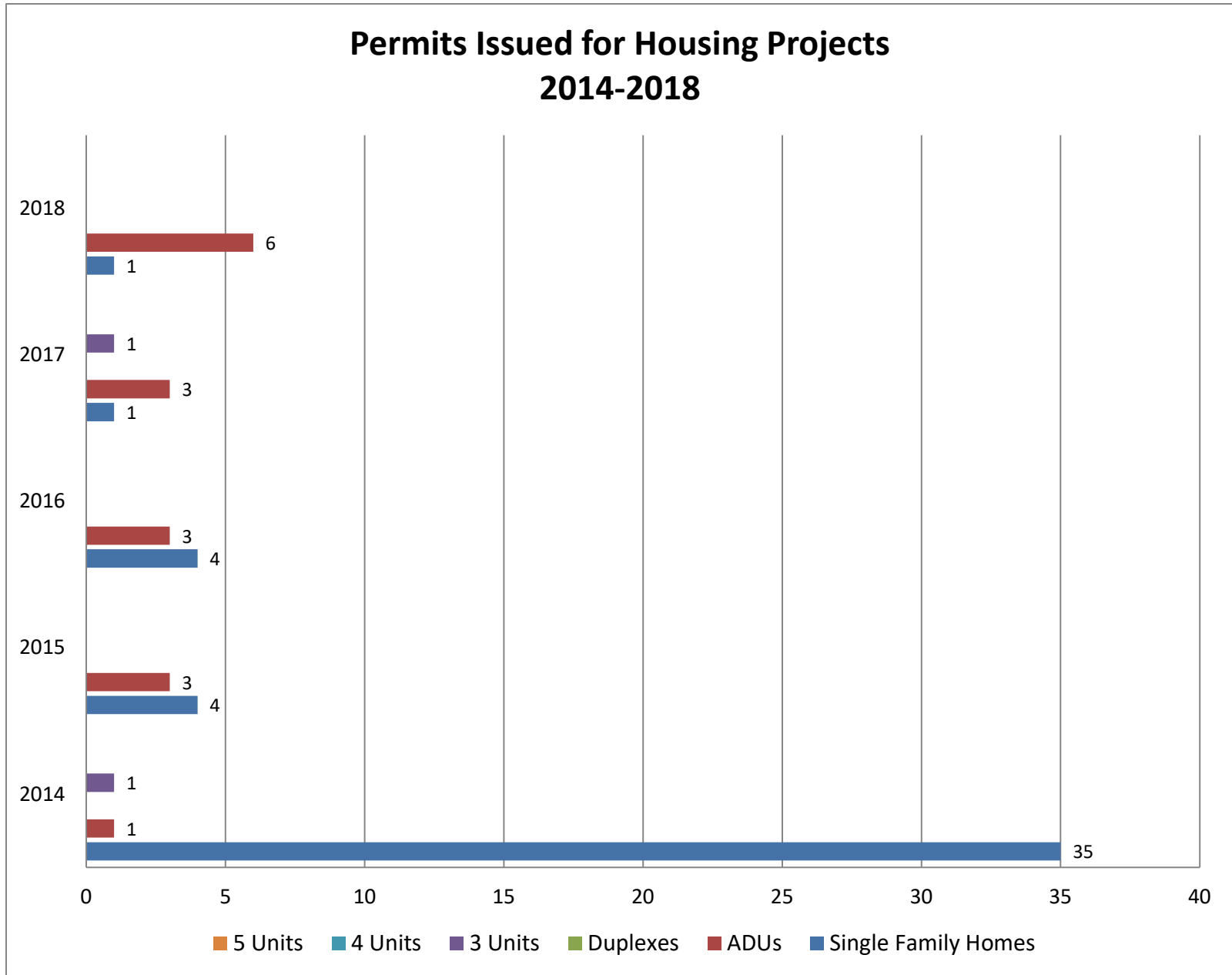
Zoning District	Lot Size	Maximum Permitted Residential Density	Percentage low income units	Percentage Density Bonus	Total Units including Density Bonus Units
R-2	4,950-7,499 sq ft	2 units	50%	30%	3 units
R-3	4,950- 5,999 sq ft	3 units	30%	15%	4 units
	6,000- 7,499 sq ft	4 units	50%	15%	5 units

2. A developer of a housing development that exceeds the qualifications for a density bonus per Government Code Section 65915 may request that the City grant one additional incentive or concession above the maximum number prescribed by Government Code Section 65915(d)(2), as applicable to the project.
 3. A developer may request a lesser density bonus than the project is entitled to, but no reduction will be permitted in the number of required target units pursuant to subsection A of this Section 17.29.030.
 4. Where a site has no maximum residential density, no density bonus need be granted. However, the City shall grant incentives or concessions and waivers or reductions in development standards requested by applicants pursuant to Government Code Sections 65915(d) and 65915(e).
 5. Inclusionary units required pursuant to Chapter 17.31 will be counted as target units for the purposes of calculating a density bonus.
- B. The following concessions and incentives shall require approval by the City Council, even though the housing development may otherwise only require approval by the Planning Commission:
1. Deferring collection of development impact fees on market-rate units until issuance of certificate of occupancy;
 2. Any direct financial assistance, including that for purchasers of target units;
 3. Any regulatory incentives or concessions not related to the zoning ordinance's development standards or parking requirements, such as incentives involving infrastructure standards or mixed-use zoning.
- C. Nothing in this section requires the City to provide direct financial incentives for the housing development, including but not limited to the provision of publicly owned land.
- D. In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

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ATTACHMENT 3

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