



**MICHAEL N. FEUER**  
CITY ATTORNEY

REPORT NO. R 17 - 0 4 2 8  
DEC 0 8 2017

**REPORT RE:**

**DRAFT ORDINANCE AMENDING SECTIONS 12.24 AND 14.00 OF  
THE LOS ANGELES MUNICIPAL CODE TO CLARIFY AND UPDATE  
AFFORDABLE HOUSING REQUIREMENTS FOR CERTAIN  
CONDITIONAL USE PERMITS AND PUBLIC BENEFIT PROJECTS**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File Nos. 14-1325 and 14-1325-S1

**Honorable Members:**

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance amends Sections 12.24 and 14.00 of the Los Angeles Municipal Code (LAMC) to clarify and update affordable housing requirements for projects seeking an increase in density, height or floor area through the approval of certain conditional use permits and public benefit projects.

Background

On September 30, 2014, a motion (O'Farrell-Huizar) was introduced in an effort to create an incentive program to encourage the development of affordable housing, utilizing the land use entitlement process to gain affordable housing units in exchange for and in proportion to the land use benefit granted to a developer, which is a policy model known as "value capture." The motion requested a report from the Department

of City Planning (Planning Department) and the Housing and Community Investment Department (HCID) on the feasibility of implementing a value capture policy that would establish a nexus between affordable housing and discretionary land use approvals.

On October 25, 2016, the Planning and Land Use Management (PLUM) Committee considered the motion as well as the reports prepared by the Planning Department and HCID in response to the motion. The reports presented the PLUM Committee with three policy options that provided different incentive-based models that offered increased density or floor area in exchange for affordable units. The PLUM Committee voted to recommend that the City Council instruct the Planning Department to work with the City Attorney to prepare a draft ordinance implementing a value capture policy "based on a fixed requirement and/or fixed requirement with mixed affordability." It also voted to recommend that the City Council instruct the Planning Department to determine, with the assistance of the City Administrative Officer (CAO) and the Chief Legislative Analyst (CLA), whether such an ordinance would warrant an economic analysis. The matter was then transmitted to the Housing Committee. On November 4, 2016, the Housing Committee waived consideration of the item, and on November 22, 2016, the City Council adopted the PLUM Committee's recommendations.

At its meeting on July 13, 2017, the City Planning Commission (CPC) considered the Planning Department's proposed ordinance, developed pursuant to the PLUM Committee's instruction. The CPC voted to recommend the proposed ordinance's approval to the City Council. At its meeting on August, 2017, the PLUM Committee considered the CPC's recommendations and the Planning Department's proposed ordinance and requested that the City Attorney transmit the draft ordinance for the City Council's consideration.

#### Summary of Ordinance Provisions

The CPC's transmittal report to the City Council, dated August 17, 2017<sup>1</sup>, (CPC Transmittal Report) includes the Planning Department's staff report, which provides a detailed description of the LAMC amendments effectuated by the draft ordinance. Notably, the draft ordinance complements the other incentive-based programs that are already employed by the City in order to increase the number of affordable housing units in development projects; namely, Density Bonus and the processes established under Measure JJJ. The draft ordinance amends the conditional use permit process in several ways. One is to impose affordable housing requirements for projects that seek to increase density by more than 35%, which is currently the maximum increase allowed under the Density Bonus program. Another is to require projects receiving an increase in height and floor area through a conditional use permit to provide a proportional amount of affordable housing units in exchange for the entitlement.

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<sup>1</sup> The CPC initially transmitted a report to the City Council on August 2, 2017, but that communication was superseded by the August 17, 2017, transmittal, which corrected and updated some of the information contained in the initial report.

The draft ordinance includes a third amendment to the conditional use provisions of the LAMC; specifically, the conditional use permit requirements for mixed use commercial/residential use development. The draft ordinance imposes an affordable housing requirement for projects seeking this type of conditional use permit that is proportional to the increased density or floor area increase requested by a developer, and increases the term of affordability from 30 to 55 years, which is consistent with the requirements under state and local density bonus regulations. In reviewing the proposed ordinance and analyzing it under state law, this Office noted that state density bonus law allows a mixed use commercial/residential project to proceed without obtaining a conditional use permit if it provides a sufficient amount of affordable housing. Therefore, in order to reduce any potential confusion between the incentives allowed under the Density Bonus program and the conditional use process for mixed use developments in LAMC Section 12.24 V, the draft ordinance removes a finding required by the current LAMC language that conflates the approval of a conditional use permit under this section with an incentive under state density bonus law. The removal of this finding allows the City to maintain the distinction between the approval of a mixed use project through the Density Bonus program and the approval of a conditional use permit that authorizes a mixed use project. These are two separate approval processes, either one of which a developer of a mixed use project may elect to pursue.

Finally, the draft ordinance amends regulations pertaining to public benefit projects in order to impose affordable housing requirements that are proportional to the density increase being sought (in excess of 35%, the maximum allowed under the Density Bonus program, as mentioned above) and to require that affordable units remain affordable for 55 years.

#### California Environmental Quality Act (CEQA) Standard of Review

The CPC recommends that the City Council determine, based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment. If the City Council agrees with this recommendation, it should direct staff to file a Notice of Exemption with the County Clerk's Office.

The CPC also recommends that the City Council adopt a negative declaration for this project. Adoption of a negative declaration is appropriate when the Council, having considered the whole administrative record and exercising its independent judgment, determines the following: (1) the City has complied with all of the procedural requirements related to the preparation, noticing and distribution of the Notice of Intent to Adopt a Negative Declaration, the negative declaration and the initial study supporting the determination of a negative declaration, as set forth in Public Resources Code, Section 21091 and CEQA Guidelines, Sections 15071, 15072 and 15073; (2) there is no substantial evidence the project will have a significant effect on the

environment; and (3) the negative declaration reflects the City Council's independent judgment and analysis. If the Council agrees with this recommendation, it should direct staff to file a Notice of Determination with the County Clerk's Office.

Pursuant to CEQA Guidelines Section 15074(c), when adopting a negative declaration the City Council must specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based. The records upon which the CPC's recommendation is based are located at the offices of the Planning Department at 200 North Spring Street, and the custodian of records is Beatrice Pacheco.

#### Charter Findings Required

Charter Section 558(b)(3) requires the City Council to make the findings required in Subsection (b)(2) of the same section; namely, whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the City Council to adopt an ordinance conforming to the CPC's recommendation of approval of the ordinance, if the CPC recommends such approval. Similarly, Charter Section 556 requires the City Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. The City Council can either adopt the CPC's findings and recommendations as set forth in the CPC's Transmittal Report or make its own.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety and to HCID. The departments were requested to provide comments, if any, directly to the City Council or its Committee when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasanee at (213) 978-8246. She or another member of this Office will be present when you consider this matter to answer questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON  
Chief Assistant City Attorney

DM:ASK:mgm  
Transmittal