

March 9, 2008

Dear Friends and Residents --

At its February 28, 2008 regular public meeting, the City Planning Commission received an update from planning staff concerning the City's density bonus (SB 1818) enabling legislation. Unfortunately, this update was delivered to us at the very moment that the City Council's enabling ordinance became final.

There is no question; the City needs more housing for the middle class and the poor. But we must achieve this lawfully and transparently. This brings me to the February 28 update, via which we learned that the City Council had added a provision to the City's enabling ordinance that defines applications that seek only a density bonus up to 35% and reduced parking (but no other incentives) as "ministerial." The City Attorney confirmed that state CEQA Guidelines exempt "ministerial" projects from CEQA review. The City Attorney also confirmed that SB 1818 does not itself use the phrase "ministerial" and is silent on how CEQA applies to density bonus applications.

I expressed my opposition to our apparent short circuiting of CEQA at the CPC meeting. The Commission asked to bring this matter back for further hearing, though we are well aware that we have no continuing jurisdiction. In the week since then, I conducted modest online research. I learned that the Director of Planning had issued a Categorical Exemption in January 2008 to support the City's SB 1818 enabling ordinance. This Categorical Exemption states that "projects filed in accordance with this ordinance will be subject to CEQA and analyzed individually regarding any potential environmental [impact] (sic)." This claim is at odds with the "ministerial" procedure authorized by the enabling ordinance.

These circumstances present at least two legal issues which are ripe for immediate litigation due to their short statutes of limitation: 1) whether the Categorical Exemption issued in support of the City's enabling ordinance is fatally flawed in light of the actual contents of the ordinance; and 2) whether the "ministerial" definition contained in the ordinance itself violates CEQA. I invite your comments and your action.

Jane Ellison Usher
President, Los Angeles City Planning Commission

Final Ordinance No. 179681
Passed by the Los Angeles City Council
February 28, 2008

An ordinance amending Sections 12.22, 12.24, 14.00 and 19.01 of the Los Angeles Municipal Code to implement a Density Bonus program, as required by State law.

(g) Procedures. (1) Density Bonus and Parking. Housing Development Projects requesting a Density Bonus without any Incentives (which includes a Density Bonus with only parking requirements in accordance with Paragraphs (c) and (d) of this subdivision) shall be considered

ministerial and follow the Affordable Housing Incentives Guidelines and the Density Bonus Procedures. No application for these projects need be filed with the City Planning Department.

Office of the City Attorney
Report No. R08-0009 January 15, 2008
Council File No. 05-1345

CEQA Findings. Regarding a finding pursuant to the California Environmental Quality Act (CEQA) and as set forth in a letter from the Director of Planning to the City Attorney's Office dated January 2, 2008, the Director of Planning recommends that the City Council adopt a General Exemption for this project, Notice of Exemption No. ENV-2008-87-CE, pursuant to State CEQA Guidelines Section 15061 (b) (3) and City CEQA Guidelines Art. 11, Sec. 1, because it can be seen with certainty that codifying the procedures for implementing the state density bonus law will not have a significant effect on the environment.

Director of Planning
Letter dated January 14, 2008
to The Honorable Rockard J. Delgadillo
CITY PLAN CASE NO: 2005-1101-CA
COUNCIL FILE NO: 05-1345

In the event the City Council adopts the PLUM and HCED Committees' recommended ordinance, transmitted herewith are proposed findings, as required by the Charter and the California Environmental Quality Act:

3. The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061 (b) (3) and City CEQA Guidelines Article II, Section 1 because it can be seen with certainty that codifying procedures for filing and reviewing applications submitted pursuant to existing State law, and which are required in order to implement the State law, will not have a significant effect on the environment. In addition, projects filed in accordance with this ordinance will be subject to CEQA and analyzed individually regarding any potential environmental [impact] (sic). Categorical Exemption Number ENV 2008-87-CE, has been issued for this ordinance.

Director of Planning
Letter dated January 2, 2008
to The Honorable Rockard J. Delgadillo

I am writing to provide you with information, pursuant to the California Environmental Quality Act (CEQA), regarding the environmental impact of the proposed implementing ordinance for the State density bonus law, SB 1818, that you are drafting. Amongst its major provisions, the amended State law requires cities to grant density bonuses and up to three incentives (defined as deviations from

the Zoning Code) when a requisite amount of affordable housing is included as part of a housing project. The law requires that "all cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented."

The implementing ordinance will not have a significant impact on the environment because it merely establishes the procedures for filing and reviewing requests for such projects. These projects must be reviewed and considered pursuant to the State law, regardless of how the City opts to implement the various provisions. As such, the substantive application of SB 1818 is already provided for in the State law and is already in effect.