
IV. OVERVIEW OF EXISTING CITY REGULATIONS

The City's General Plan is the planning guideline for the future. It reflects the community's long-term vision, and provides the perspective to judge day-to-day decisions. The Plan contains goals and policies that are used by the City Council and the Planning Commission in considering land use and planning-related decisions, and guides future funding decisions. City staff uses the General Plan on a daily basis administering and regulating land use and development activity. The Plan also enables citizens and those seeking to develop property to understand San Mateo's values and objectives. All California cities and counties are required by the State of California to have a general plan. The City Council adopted the current General Plan for San Mateo on July 16, 1990.

The Housing Element is one component of the General Plan that outlines the specific goals and programs to provide enough housing to meet the community needs for housing. It is the only part of the General Plan that is required by law to be certified by the State of California Housing and Community Development Department (HCD). As such it has very specific requirements as to the content, including ensuring that there is adequately zoned land in the community to accommodate construction of new housing in amounts that are allocated to each city as its "fair share" of the expected regional housing need. The City of San Mateo's current Housing Element covers the planning period of 2001-2006, and has been certified by the State as meeting all legal requirements. The State has extended the next required update until 2009.

In November 1991, the voters adopted an initiative (Measure H) which amended the General Plan. Measure H made several changes to the General Plan, primarily directed at reducing maximum heights and densities for residential and most non-residential uses, while increasing the City's commitment to providing affordable housing.

The Below Market Rate (BMR) program was adopted by the City Council on November 17, 1992 as implementation of Measure H. It is an inclusionary program that requires 10% of all new residential developments containing 11 or more units be sold or rented as affordable units per City guidelines.

A comprehensive update of the General Plan, consistent with the provisions of Measure H, was approved by the City Council in 1996.

In November 2004, the voters adopted Measure P, which was an extension of Measure H. This extension to 2020 included updates, clarifications and some changes to Measure H. Significant provisions of Measure H were maintained. The City's Zoning Code has been amended to reflect the land use policies and text contained in the General Plan, and is in conformance with provisions of Measure H and Measure P.

Those portions of the General Plan which were amended by the two initiatives are designated in *italics* in the General Plan and in this report.

V. DENSITY BONUS LAW

The State of California Density Bonus Law mandates that cities provide an increase in the maximum allowed density and “concessions or incentives” (such as reduced zoning requirements) for developers who choose to include affordable housing as part of a development project. This law has been in existence since the 1980’s, but underwent major revisions with the adoption of SB1818, effective in January 2005. In 1983, San Mateo adopted a density bonus program by resolution in compliance with the state law. It provided for a 25% density bonus and one developer concession or incentive if a project provided either 10% very low income units, 20% low income units or senior housing. There was also a 10% bonus option for a project that provided 20% moderate income ownership units that was added at a later date.

San Mateo did not receive any requests for density bonuses from developers until 1992. From 1992 through August 2007, 5 out of a total of 33, or 15%, of approved residential development projects have utilized the density bonus provisions, 3 in the high density range and 2 in the medium density category. These developments received a total of 71 bonus units compared to the total 2,381 units that were constructed during the same time period, which equates to an overall increase in approved housing units of 3%.

Figure 5
Approved Projects with Density Bonus

Year Approved	Project	Density Category	Density Bonus	Bonus Units	Concession/ Incentive
1998	Norfolk Gardens	Medium	25%	13	None
2002	Metropolitan	High	22%	40	Tandem Parking
2004	Versailles	High	9%	5	Side Setback
2004	Rotary Floritas	High	2%	10	Side Setback
2005	Stonegate	Medium	7%	3	Increase FAR
			Total:	71	

As of January 2005, the affordability and corresponding density options were revised with the passage of SB 1818. The new law establishes a sliding scale for density bonuses associated with the provision of affordable housing options that can reach a maximum of 35%. SB 1818 also establishes a sliding scale of one to three development concessions or incentives to be provided dependent upon the type and amount of affordable housing provided. In general the new law provides more benefits for developers depending on the amount of affordable units provided. For example under the old density bonus law, if a developer provided 10% of the project as very low income units, the project was entitled to a 25% density bonus and one concession or incentive. Under the provisions of the new law, the same project would be eligible for a 32.5% density increase and 2 concessions or incentives. It also mandates the use of statewide parking ratios for housing projects which qualify for a density bonus. Another alternative is a land dedication option to provide a site at least one acre in size to accommodate very low income units rather than construct onsite. This law has

proven difficult to interpret and apply for local cities. Some cleanup language was passed in 2006, and there is further cleanup legislation proposed that will be worked on next year, that may change some of these provisions.

One of the options in SB 1818 requires that a 5% density bonus be granted for projects which include 10% moderate income units. Since the City's current BMR program requires that at least 10% moderate income units be provided in projects of more than 10 units, it is San Mateo's current interpretation that these projects are eligible for a 5% density bonus and one concession or incentive. For rental BMR projects where the City's requirement is 10% of the units to be affordable to lower income households, under State Law the density increase of 20% is allowed with one developer concession or incentive.

With the current Density Bonus law provisions, if the City increases its BMR requirements, developers will be eligible for increased density bonuses. The figure below demonstrates prior, current and proposed affordability and density options for a hypothetical 50-unit project on a one acre site zoned R-4.

Figure 6
Density Bonus Law Impacts on San Mateo BMR Program

Density Bonus Law Impacts on San Mateo BMR Program						
Assume a 50 unit project on a one acre site (R4: 50 DU/acre)						
Provision	Income Target	Affordable %	Affordable Units	Increase in Density	Max Units	Developer Incentive
Old Density Bonus (prior 2005):	Moderate	20%	10	10%	55	1
	Low	20%	10	25%	63	1
	Very Low	10%	5	25%	63	1
Current BMR Ownership	Moderate	10%	5	5.0%	53	1
Current BMR Rentals	Lower	10%	5	20.0%	60	1
Current RDA Project Areas	9% Moderate, and 6% Very Low	15%	8	22.5%	62	1
Proposed BMR Ownership	Moderate	15%	8	10.0%	55	1
Proposed BMR Rental	Lower	15%	8	27.5%	64	1
Proposed BMR Rental Option	Very Low	10%	5	32.5%	67	2
Density Bonus Land Dedication*	Very Low	10-30%	5-15*	15-35%	58-68	0
*Note Land Dedication Option: Min. requirement. of one acre land would have max density of 35-50 units depending on location. This would likely be most feasible if developed as an affordable housing project that could attract special financing and would likely leverage additional affordable units.						

State law includes specific provisions for the consideration of these types of projects. It does not prohibit a city from denying an affordable housing project, or requiring a reduction in density prior to approval. However, in order to take this action, there are very specific, narrowly defined, factual based findings which are required by the law. Denial of a project normally requires a finding that

the project will result in a specific, adverse impact upon the public health or safety. This state law goes on to state that “‘specific, adverse impact’ means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete.”

The fact that a developer may request a concession or incentive of his own choosing under the Density Bonus Law runs counter to the historical process of reviewing planning applications. The concern arises over whether the concession or incentive results in a poorly designed project that does not fit into its surroundings. This results in uncertainty for the developer, city planners and the Planning Commission. Although the law gives the developer the right to choose the concession or incentive, it must result in “identifiable, financially sufficient, and actual cost reductions” for the project. Therefore the City can require that a developer submit an economic analysis to support this with his proposal to ensure there is reasonable basis for the request.

Cities are required to adopt local density bonus ordinances to comply with the changes of the recent changes in legislation. San Mateo’s current ordinance simply states that it will comply with State law but does not make any specific local requirements. Some cities require economic analyses to support requests for concessions or incentives, such as setback adjustments, increase in FAR, reduction in parking, etc. Others have developed a “standard” list that will automatically be granted and only require an economic analysis for requests from developers not already specified by the city

Currently San Mateo does not have a clear process to review density bonus requests or to give guidance to developers on the reasonableness of a specific concession or incentive. Also the current Density Bonus ordinance does not adequately address the new provision of the law. It is recommended that the City clarify its position on certain concessions and incentives, as well as other interpretations of the law. Staff will survey best practices of cities that have set up standards or processes and develop a proposal to update its Density Bonus Ordinance with more specific language regarding concessions or incentives.

RECOMMENDATION:

Update the City’s Density Bonus Ordinance to fully address recent legislation, including more specific language on concessions and incentives.

Although the State Density Bonus law has been in effect since the mid 1980’s, very few developers have requested its use. Historical trends show that most projects in San Mateo do not utilize the maximum density allowed by the underlying zoning, and therefore do not need a density bonus. It is unclear whether the new changes to the law have provided enough incentives to motivate developers to utilize this program in the future. And it is also unclear whether future legislation will change the way the law is applied to San Mateo’s BMR program.