



City of Culver City

Staff Report

File #: 21-604, Version: 1

Item #: PH-1

CC - PUBLIC HEARING: Introduction of an Ordinance Amending Mixed-Use Development Standards, Including Regulations to Require a Mandatory Percentage of Affordable Housing as Part of New Mixed-Use Development Projects

Meeting Date: January 25, 2021

Contact Person/Dept: Sol Blumenfeld / Community Development Director
Michael Allen / Current Planning Division Manager
Tevis Barnes / Housing Division Manager

Phone Number: 310-253-5727

Fiscal Impact: Yes No

General Fund: Yes No

Public Hearing:

Action Item:

Attachments:

Commission Action Required: Yes No **Date:** October 14, 2020

Public Notification: (E-Mail) Meetings and Agendas - City Council (01/20/21); (Posted) City Website (01/20/21); (Published) Culver City News, E-Gov (01/07/21);

Department Approval: Sol Blumenfeld, Community Development Director (01/14/2021)

RECOMMENDATION

Staff recommends the City Council introduce an Ordinance approving Zoning Code Amendment P2020-0238-ZCA, amending Culver City Municipal Code (CCMC), Title 17 - Zoning (Zoning Code) Section 17.400.065 - Mixed-Use Development Standards to require a mandatory percentage of affordable housing with development incentives as part of new mixed-use development projects (Attachment 1).

PROCEDURE:

1. The Mayor seeks motion to receive and file the affidavit of mailing and posting of public notice.
2. The Mayor calls on staff for a brief staff report and City Council poses questions to staff as desired.

3. The Mayor seeks a motion to declare the public hearing open and the City Council receives public comment.
4. The Mayor seeks a motion to close the public hearing after all testimony has been presented.
5. The City Council discusses the matter and arrives at its decision.

BACKGROUND:

On December 10, 2018, the City Council discussed a staff report regarding a Zoning Code Amendment to the Mixed-Use Development Standards (Ordinance) to include a mandatory affordable housing component. On April 13, 2020 the City Council reviewed draft provisions for the Zoning Code Amendment and provided direction related to community outreach and some of the draft Ordinance provisions.

On September 15, 2020 staff reached out to developers, non-profit developers and other real estate professionals in the development community to gather input on the drafting of the Ordinance, and many of their ideas are reflected in the proposed Ordinance. The comments from the attendees were generally positive but there were questions about the level of affordability and project streamlining among others. The comments of the attendees are summarized in Attachment No. 6.

On October 14, 2020, the Planning Commission considered and unanimously approved the proposed Ordinance and provided the following recommendations:

- Inclusion of additional criteria regarding the effect of the proposed Ordinance on pending mixed use development project applications;
- Clarification to establish that “rehabilitation” of commercial properties for mixed use development is permitted pursuant to Section 17.610.020 - Nonconforming, allowing conversion of existing commercial buildings to mixed use developments;
- Additional wording to ensure that new shared parking provisions are consistent with State law;

In addition, the Planning Commission raised a question as to whether the detail of Section 17.400.065.K of the Zoning Code Amendment addressing replacement of dwelling units should be replaced with a reference to state law.

Each of the Planning Commission’s recommendations and questions is discussed further at the conclusion of the Discussion section of the report.

DISCUSSION:

The proposed Ordinance is focused on mixed use development and is based on a feasibility study (Study) prepared by Keyser Marston Associates (KMA) (see Attachment No. 4). The Study examines

the local real estate market, affordability gap for new development and includes prototypical affordable housing project modeling to assess the appropriate level of project affordability.

The Study notes that the financial impacts created by inclusionary housing requirements are often mitigated by projects obtaining higher densities using State Density Bonus Law. In order to focus the City's affordable housing requirement in areas that can support such higher density, the study recommends the City's additional affordable housing requirements be limited to the mixed use development areas because of the higher range of densities that would result (approximately 30% to 60% above the base multi-family density permitted in the City), the potentially greater housing production it affords in Culver City and the fact that mixed use development is permitted along all major commercial corridors, which are best served by transit and services and can support increased density.

KMA identifies the "affordability gap" in housing production as the difference between the achievable rents or sales prices and the allowable rent or sales price for the affordable units. Financial models are used to address the affordability gap between market rate and affordable units by projecting the percentage of units that could be designated affordable housing and their level of affordability given City development constraints.

Summary of Proposed Mixed-Use Ordinance Text Amendments

The Zoning Code Amendment for Mixed-Use development standards and regulations is proposed to include:

1. Mandatory Affordability -For mixed-use projects incorporating affordable units as a Community Benefit, a requirement that not less than 15% of dwelling units be affordable housing pursuant to State law and the City's requirements.
2. State Density Bonus and Community Benefits Density Bonus Incentives - Current Mixed-Use standards and regulations offer increased density in exchange for a Community Benefit (see Attachment No. 2). Under City policy, State Density Bonus law and Community Benefits in the form of affordable units have been applied together on a case by case basis. This practice would now be identified in the Mixed-Use Ordinance as density incentives that may be combined for a double density bonus, as authorized by Government Code Section 65915(n) for an enhanced density bonus permitted by local ordinance. For qualified projects, and at the City's sole discretion, the current Community Benefit Density Bonus that allows an increase from 35 dwelling units per acre mixed-use base density to 50 dwelling units per acre Community Benefit density¹ could be combined with a State law density bonus for an additional density increase in exchange for an accompanying increase in affordable units.

Furthermore, AB 2345, new State legislation which became effective January 1, 2021, allows a density bonus of up to 50% as follows:

1. Projects that set aside 15% of the base units to very low-income households.
2. Projects that set aside 24% of the base units to low income households.

3. Ownership projects that set aside 44% of the base units to moderate income households.

These density bonus increases do not override Section 65915 (n) but mean that a developer must first meet the increased affordability standards to achieve a higher density bonus percentage. Under the proposed 15% mandatory affordability proposed in the draft text amendment a project would qualify for the 50% density bonus increase.

Thus, for example, if a developer elects to include 15% very-low income under State Density Bonus Law, the project would be entitled to a 50% increase above the base density of 35 units per acre (i.e., 52.5 units per acre) (see Base Density Calculation below) and would have to include six very low income units. If the developer also applies for the enhanced mixed-use Community Benefit density bonus, the project could receive an additional density bonus that brings the density to 75 units per acre (50% increase in the Community Benefit density of 50 units per acre). In exchange, the developer would need to provide a total of 12 affordable units (15% of 75 units - rounded up), consisting of the six very-low income units required by State Density Bonus Law plus an additional six affordable units required by the City (the Community Benefit Affordable Units). The Community Benefits Units can be provided at any income category from very-low income to workforce at the developer's discretion.

Example: Base Density Calculation for a 1-Acre Site with Very Low Income Units

- 35 du/ac (base density) with 15% mandatory very low-income units required in Mixed Use Ordinance provides 50% density increase allowance (per AB 2345)
- Community Benefit base density (35 base density units +15 du/ac) = 50 du/ac
- 50% of 50 units + 25 units = Total 75 total units
 - With 6 very-low income units (15% very-low units of 35 du/ac base density) and
 - 6 affordable Community Benefit units (from very-low income to workforce)

3. New Use Provisions - Two new use provisions have been added that permit, by City Council resolution: 1) New ground floor uses that help activate the adjacent streets; and 2) Mixed-Use projects in the Open Space (OS) Zone when it does not displace park space and is consistent with the "Purposes" provisions of Zoning Code Section 17.250.030.A, findings 1-5. In addition, the proposed amendment includes the reduction of ground floor use restrictions to eliminate a gross floor area requirement which has proven to be impractical for larger mixed-use development projects particularly given the changing retail environment of the times.
4. Mandatory Rental Affordability Restrictions - Mandatory affordability restrictions shall apply for not less than 55 years consistent with State law affordable housing requirements.
5. Mandatory Owner Occupied For-Sale Affordability Restrictions - Mandatory affordability

restrictions shall apply to the Community Benefit Affordable Units for not less than 55 years, unless the owner exercises a buy-out option in accordance with an equity sharing agreement with the City.

6. Mandatory Replacement of Existing Rental Units - All rental units existing on the site in the five year period preceding the project application submittal must be replaced on site and all very-low and low-income units shall be replaced at the same or lower levels of affordability pursuant to Government Code Section 65915 (c)(3) or a project is not eligible for the combined State Density Bonus and Community Benefits Density Bonus Incentives.

7. Mandatory Replacement of Affordable Housing Units Subject to Affordable Covenants - All existing dwelling units subject to affordability covenants shall be replaced.

8. Location and Unit Mix of Community Benefit Affordable Units - Required to be dispersed throughout the project. The bedroom mix provided in the Community Benefit Affordable Units are required to be proportional to the bedroom mix provided for the market rate units.

9. Micro-units - Micro-units at 350 square feet are authorized in mixed-use developments. An additional density bonus of approximately 14% is recommended for micro units providing that there is only marginal increase in the overall size and volume of the development that is otherwise permitted under the density bonus provisions of the Ordinance. (Please see Attachment No. 5 - Example)

10. New Development Standards - A new provision has been added to allow building rehabilitation on properties of 5,000 sf or greater to encourage mixed-use development building conversions on all commercial lots.

11. Allowance for Additional Density and Parking Reduction at Major Transit Stop or within a Transit Priority Area - Language added consistent with the Code of Federal Regulations related to increased density and reduced parking requirement or when demonstrated through a shared parking analysis that such parking reduction will not negatively impact surrounding commercial or residential neighborhoods.

12. Deletion of Community Benefits Calculation - The provisions related to determining the value of a community benefit have been deleted. They no longer apply because there is only one community benefit, affordable housing, that is eligible for the local density bonus incentive.

13. Qualifying Incomes and Affordable Housing Cost for Affordable Housing Units - The qualifying

incomes and affordable housing cost for the affordable units required under State Density Bonus Law as set forth in Government Code Section 65915.

The qualifying incomes and affordable housing costs for the Community Benefit Affordable Units would be as follows:

- The qualifying income for workforce units is defined as greater than 80% and not more than 129% of County median income. For the purposes of this requirement, the source of the County median income is the memorandum published annually by the State of California Department of Housing and Community Development (HCD). Both the minimum and maximum incomes will be calculated mathematically using the published County median income as the base. Workforce rental units qualify as affordable if total housing cost does not exceed 30% of 129% of median income. Owner-occupied workforce units qualify as affordable if total housing cost does not exceed 35% of 129% of median income.
- The qualifying income for moderate income units is defined as greater than 80% and not more than 120% of County median income. For the purposes of this requirement, the source of the County median income is the memorandum published annually by HCD. Both the minimum and maximum incomes will be calculated mathematically using the published County median income as the base. Rental units qualify as affordable if total housing cost does not exceed 30% of 110% of median income. Owner-occupied units qualify as affordable if total housing cost does not exceed 35% of 110% of median income.
- The qualifying income for low income units is defined as not more than 80% of County median income. Rental units qualify as affordable if total housing cost does not exceed 30% of 60% of median income. Owner-occupied units qualify as affordable if total housing cost does not exceed 30% of 70% of median income.
- The qualifying income for very- low income units is defined as not more than 50% of County median income. Rental and ownership units qualify as affordable if total housing cost does not exceed 30% of 50% of median income.

14. Affordable Housing Plan/Design Regulations & Affordable Housing Agreement- The developer must submit an Affordable Housing Plan for review and approval, setting forth in detail the manner in which the affordable housing provisions will be implemented for the proposed project, and execute an Affordable Housing Agreement for recordation in the land records.

15. First Time Homebuyer Requirement for Owner-Occupied Units- Prospective home buyers of the Community Benefit Affordable Units must comply with the HUD definition of first-time home buyer.

16. In Lieu Affordable Housing Payment - The applicant will be required to provide a minimum of 10% of the affordable units on-site. At the discretion of the applicant, payment of a fee in lieu of

some or all of the Community Benefit Affordable Units could satisfy the requirement, as follows:

- The amount of the fee shall be calculated using the fee schedule set forth in the regulations in effect at the time of issuance of the first building permit for the project.
- One-half of the required in-lieu fee must be paid (or a letter of credit posted) prior to issuance of a building permit for any portion of the project. The remainder of the fee must be paid before a certificate of occupancy is issued for any portion of the project.
- The fees collected shall be deposited in the City's Low-and -Moderate Income Housing Trust Fund for the purpose of providing, preserving, maintaining and administering affordable housing.

17. Off-Site Units - At the request of the applicant and subject to City approval, the applicant may provide some or all of the Community Benefit Affordable Units by constructing residential units that comply with the requirements for the Community Benefit Affordable Units at a site other than the site of the project. The criteria and conditions that will be imposed on this off-site option are set forth in the regulations.

18. Land Donation - At the request of the applicant and subject to the discretion of the City, the applicant may provide some or all of the Community Benefit Affordable Units by a conveyance of land to the City for the construction of the required units. The criteria and conditions that will be imposed on the land donation option are set forth in the Regulations.

19. Regulations - The City Council shall by resolution adopt the City's Affordable Housing Implementation Plan and Design Regulations (Attachment No. 3).

20. Administrative Fees - The City Council may by resolution establish reasonable fees and deposits for the administration of the Mixed-Use Community Benefit Density Bonus, which shall be set forth in the Regulations. These will be presented to Council at a subsequent meeting.

Planning Commission Recommendations:

- **Effect of Ordinance on Pending Development Applications:** The Planning Commission recommended the inclusion of language indicating that whenever plans sufficient for a complete plan check are accepted by the City and a plan check fee is paid, a vested right is granted to a project to proceed with its development in substantial compliance with a projects entitlement, zoning, and development rules, regulations, ordinance and adopted policies in

force on the date that the plan check fee is paid as indicated on a valid building permit application. Such a provision establishes a different criteria from what exists in the current Zoning Code.

Under the existing provisions of Zoning Code Section 17.100.020.E, whenever a land use permit application has been deemed complete by the Community Development Department/Current Planning Division, the project application will be processed in compliance with the project entitlement, zoning, and development rules, regulations, ordinances and adopted policies in effect on the date such application is accepted as complete. This would exclude all projects with “complete” applications prior to the effective date of the Ordinance from compliance with the new requirements.

The key difference between these two provisions is:

- Under the current Zoning Code, the requirements to be applied to a submitted application would be based solely on the date the application is deemed complete.
- Under the Planning Commission recommendation, the requirements to be applied to a submitted application would be based on the date the application is deemed complete **and** plan check fees have been paid. Typically, plan check fees are not paid until much later in the process, after a project application has been approved and a building permit application has been submitted.

The likely result is that fewer projects would be required to comply with the Ordinance under the existing Zoning Code provision (triggered by date of complete application); whereas a larger number of projects would be required to comply with the Ordinance based on the Planning Commission’s recommendation (triggered by complete application and payment of plan check fee).

No further changes are needed to the proposed Ordinance in this regard, unless the City Council wishes to establish a different criterion for pending project applications from what currently exists in the Zoning Code.

It should be noted, this provision does not apply to other applications or approvals that may be necessary to entitle the project to proceed (*i.e.*, subdivision, zone variance, design review board review, *etc.*) and from subsequent changes in the Building and Safety and Fire regulations found necessary by the City Council to protect the public health and safety and which are applicable on a citywide basis enacted after the application is deemed complete to implement State or Federal mandates.

Staff is seeking direction from City Council in this regard. If the City Council determines to establish criteria different from the existing Zoning Code, a Section will be added to the Ordinance consistent with such direction.

- **Conformance to Zoning Code Section 17.610.020 A.2 Related to Building Rehabilitation for Conversion of Existing Commercial Buildings to Mixed Use:** The Planning Commission recommended additional language to ensure that the rehabilitation of commercial property for mixed use developments be subject to the existing non-conforming provisions in CCMC Section 17.610.020 ensuring non-conforming properties are brought into compliance

with existing codes when improvements to a non-conforming structure exceed the valuation or square footage thresholds established as a Major Improvement or Minor Improvement. All such conversions will comply with alterations limitations to maintain non-conforming structure conditions.

- ***Shared Parking Provisions Consistent with State Law:*** The Planning Commission agreed with staff's recommendation that language be added to ensure that a shared parking study is submitted as part of all mixed use project applications to ensure that plans take into consideration shared parking and minimize the parking footprint in new mixed-use developments, but suggested that shared parking requirements be consistent with state law.
- ***Reference to State Law Regarding Replacement Units:*** A question was raised by the Planning Commission as to whether the detail of Section 17.400.065.K of the Zoning Code Amendment addressing replacement of dwelling units should be replaced with a reference to state law. Because the replacement obligation only arises if the developer wants to utilize the additional Community Benefit Density Bonus, it is up to the City to determine what those obligations should be. The replacement obligations in the Ordinance were not designed to mirror SB 330 or any other State law (although they generally reflect State Density Bonus Law). If there is a State law in effect now or in the future that imposes more stringent replacement obligations, then that law would apply to the extent it conflicts with the Ordinance.

ENVIRONMENTAL DETERMINATION:

The Project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty there is no possibility that the Project to amend the Zoning Code will have a significant effect on the environment. The proposed Zoning Code Amendment, modifying the mixed-use development standards, by itself does not result in any physical changes nor any significant effects on the environment. Furthermore, the proposed Zoning Code Amendment is not in conjunction with the specific approval of any existing development or use permit applications. Therefore, any projects seeking approval subsequent to the proposed Zoning Code Amendment, would be subject to appropriate CEQA analysis at that time of any such application.

FISCAL ANALYSIS

The fiscal impacts to the City associated with the approval of the Zoning Code Amendment will be addressed through adoption of a new fee resolution concerning Ordinance implementation costs that will be presented to City Council prior to the effective date of the proposed Ordinance.

ATTACHMENTS

1. Draft Ordinance and Exhibit A
2. Planning Commission Resolution No. 2020-P014
3. Draft Affordable Housing Implementation Plan

4. KMA Feasibility Study
5. Example of micro unit 14% density increase with marginal increase in building volume
6. Summary of stakeholder meeting comments

MOTION

That the City Council:

Introduce an Ordinance approving Zoning Code Amendment P2020-0238-ZCA, amending Culver City Municipal Code (CCMC), Title 17 - Zoning (Zoning Code) Section 17.400.065 - Mixed-Use Development Standards to require a mandatory percentage of affordable housing as part of new mixed-use developments.

NOTES

¹ The Community Benefit Density is 65 units per acre in the Transit Oriented Development District, within a Transit Priority Area, within ½ mile of a transit stop as defined in the Public Resources Code, and/or where a project is located on a split jurisdiction lot where the density in the other jurisdiction is 65 units per acre or greater.