City of Long Beach
Working Together to Serve

Memorandum

Date: April 4, 2017

To: Patrick H. West, City Manager

From: Amy J. Bodek, Director of Development Services

For: Mayor and Members of the City Council

Subject: **2016 State Density Bonus and Accessory Dwelling Units Legislation and Implications for Local Governments**

On February 21, 2017, the City Council requested the Development Services Department to review existing planning and zoning law and to provide recommendations for, by Ordinance, the creation and/or allowance of accessory dwelling units (ADUs) in single family and multifamily residential zones. This memorandum provides an update on this request.

As the State Legislature considers new housing proposals in 2017, it is important to understand the proposal in context with new State laws that have been enacted in 2016. This memorandum summarizes several 2016 California legislative actions that address the shortage of housing in the State. Reflecting an emphasis on housing policy, the State passed four density bonus bills and three second/accessory unit bills, to ease the review and approval process for new housing units. Several proposed bills for by-right affordable housing development, that would have required mandatory ministerial approval for projects typically subject to discretionary review, stalled in the summer of 2016, but similar bills for by-right development will be revisited during the 2016-17 legislative session.

Density Bonus Law

The purpose of Density Bonus Law (DBL) in California, initially enacted in 1979 by the State Legislature, is to encourage cities and counties to offer concessions or incentives to housing developments that include certain percentages of lower income units. Generally governed by *Government Code Section 65915, Density Bonuses and Other Incentives*, and recognized by California courts, DBL rewards a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more units than would otherwise be permitted by applicable local regulations. By incentivizing developers, DBL promotes the construction of housing for a variety of income levels, including seniors. Under DBL provisions, a city or county must grant a density bonus, concessions and incentives, prescribed parking requirements, as well as waivers of development standards upon a developer's request when a certain percentage of lower income housing is included within a housing development proposal. In exchange for DBL, the units are covenanted to remain affordable to persons of low-, very low-, or moderate-income for a set period of time, usually 55 years.

Since 1983, the City has approved approximately 204 density bonus units, located within 18 development projects throughout the City. The attached matrix and location map depicts

the project address, number of density bonus units, and the expiration date of the units encumbered by affordability covenants.

The following is a summary of the Density Bonus Laws signed by Governor Brown in 2016:

AB 2442. ***Expands the categories of specialized housing that could qualify a development for a density bonus.***

- Recognizing the statewide need for certain types of specialized housing, AB 2442 adds that a density bonus of 20 percent shall be granted where at least 10 percent of the total housing units are designated for foster youth, disabled veterans, or homeless persons, and are offered at the same affordability levels as very-low income units.

AB 2501. ***Clarifies and streamlines the implementation procedure at the local level, while restating the objective of producing more housing units.***

- Requires local governments to expeditiously process density bonus applications by (a) adopting procedures and timelines, (b) providing applicants with a list of documents and information required for a density bonus application to be deemed complete, and (c) notifying applicants when applications are deemed complete in accordance with the Permit Streamlining Act. Local governments are prohibited from requiring the preparation of any additional reports or studies for a density bonus application, but may require reasonable documentation to establish eligibility for a requested density bonus, incentives, concessions, waivers, or reduced parking ratios.

- Slightly modifies the eligibility standards for incentives and concessions, and the burden of proof in denying a requested incentive or concession is now expressly on the local government.

- Adds language to make clear that each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number.

- Makes clear that developers of density bonus projects may choose to accept no increase in density yet still be eligible to receive incentives and development standard waivers in exchange for covenanting a prescribed percentage of affordable units.

AB 2556. ***Addresses implementation questions related to the replacement of affordable units previously onsite.***

- AB 2222 was adopted in 2014, to ensure that housing units occupied by lower-income persons or households were not being wiped out and replaced with density bonus projects that yielded fewer net affordable units. AB 2556 will revise the

definition of "replace" to require a rebuttable presumption that lower income occupants lived in those units in the same proportion as the overall percentage of lower income occupants in the jurisdiction.

- AB 2556 also provides guidance regarding rent-controlled units by giving local government the power to require either (i) replacement with rental units subject to a recorded affordability restriction for at least 55 years, or (ii) replacement with units that remain subject to the local rent or price control ordinance.

- Provides guidance on the definition of "equivalent size" for replacement units, and states that the replacement units must contain at least the same total number of bedrooms as the units being replaced.

AB 1934. ***Mixed Use Projects - Provides certain development bonuses for commercial developers that partner with affordable housing developers in conjunction with their commercial projects.***

- By opening DBL to commercial developers, AB 1934 seeks to address (a) the State's need for affordable housing, and (b) local government's desire for increased revenues, by encouraging non-traditional housing developers to enter the market, and think outside the box in their developments. This bill creates an opportunity for commercial developers to partner with an affordable housing developer to construct affordable units. The affordable housing developer would be eligible to receive bonuses, incentives and waivers for qualifying projects, and the commercial developer could also receive a "development bonus." This bonus includes incentives agreed upon between the commercial developer and the local government including but not limited to, modifications to maximum allowable intensity, maximum FAR, maximum height limits, minimum parking requirements, upper floor accessibility regulations, and zoning or land use regulations.

- AB 1934 includes a sunset provision that it will remain in effect only until January 1, 2022.

Accessory Dwelling Unit (ADU) Law

The State of California has also used the ADU to address the shortage of housing. ADUs, or "second units," allow an additional housing unit within single-family neighborhoods that permit only one home. State law deems that second units are not an increase in the allowable density.

California first enacted these laws in 1982, which have been amended five times, each time increasing the ease with which second units can be permitted. The amendment in 2002 (AB 1866) was a particular milestone, requiring that second units be permitted by-right, without any discretionary review. The State ADU law has always allowed for local jurisdictions to adopt their own second unit ordinance, crafting customized regulations for unique conditions. The City's second unit ordinance was last updated in 1988.

The following is a summary of ADU Laws signed by Governor Brown in 2016:

SB 1069 and AB 2299. ADUs – *Require that local jurisdictions allow ADUs when they meet certain standards; allows for jurisdictions to craft their own ADU ordinance.*

- SB 1069 and AB 2299 update the State's existing ADU regulations to require that local jurisdictions ministerially approve accessory units that meet established criteria, such as size limits and setbacks. These twin bills differ from the City's existing second unit ordinance by allowing greater flexibility, greater size allowances, and parking in certain setbacks. Furthermore, AB 2299 affects the City's ability to regulate certain provisions pertaining to parking, fire sprinklers and utilities.

- AB 2299 deems existing second unit ordinances null and void if they are more restrictive than the AB 2299 provisions. As such, the City's existing second unit ordinance is no longer effective and the City must comply with the new regulations. The City may, however, update its local ordinance to comply with AB 2299 requirements and retain or include regulations for ADUs that are not otherwise preempted by the State.

AB 2406. Junior Second Units – *Enables local jurisdictions to adopt an ordinance permitting "junior" second units.*

- Junior units could be permitted in situations where existing properties could not accommodate a full accessory dwelling unit. Junior units may be a maximum of 500 square feet and contain only limited kitchen and bath facilities.

<u>The Effect of New Legislation on Current City Regulations</u>

The City's current density bonus provisions are spelled out in Long Beach Municipal Code (LBMC), Section 21.63, Incentives for Affordable Housing. This section is written specifically to defer to State DBL. With a January 2017 effective date, the City's current zoning and development regulations will be updated to maintain consistency with new State DBL and ADU Laws. While the general framework of the City's existing regulations is consistent with current State law, (Purposes, Qualification, and Limitation), the following sections must be revisited:

- Procedures (21.63.040)
- Development Standards (21.63.050)
- Maintenance of Units (21.63.060)
- Additional Incentives (21.63.070)
- Waiver of Development Standards (21.63.080)
- Additional Financial Incentives

Similarly, the City's existing second unit regulations located in Section 21.51.27 of the LBMC, Secondary Housing Units ("Granny flats") should be updated to reflect the standards of State law. Doing so will allow the City to also include special development standards to respond to the City's specific characteristics. These standards could include lot size requirements and restriction of ADUs in certain areas of the City, such as coastal jurisdictions or parking impacted areas.

Next Steps

The City's current record of density bonus projects, as summarized in the attached matrix, indicates that while the City has approved development of 204 density bonus units in 18 projects, no density bonus projects have been entitled since 2012. There is no clear basis for this gap, however, as most residential development in the City over the last decade has occurred within and around Downtown. Likely, the adoption of the Downtown Plan in 2012, which permits the highest densities in the City, has been a factor.

Though DBL has been in effect for more than 35 years, both developers and cities have struggled with its application. As a result, many developers are either unaware of the law, are unsure of how it works, or don't perceive the bureaucratic burden of the process an appropriate tradeoff for additional density. Many cities share this concern and further are resistant to attempts to limit their police powers on multifamily development projects. However, as the housing crisis continues unabated, cities are being increasingly forced to limit the regulation of density bonus projects and to approve them by-right, or with minimal review.

Given the significant change in State DBL, staff recommends a comprehensive update of the City's density bonus, as well as the accessory dwelling unit regulations, to maintain consistency with State law.

If you have any questions regarding this matter, please call Linda Tatum, Planning Bureau Manager, at (562) 570-6261.

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Attachments: List of Density Bonus Projects
Map of Density Bonus Projects

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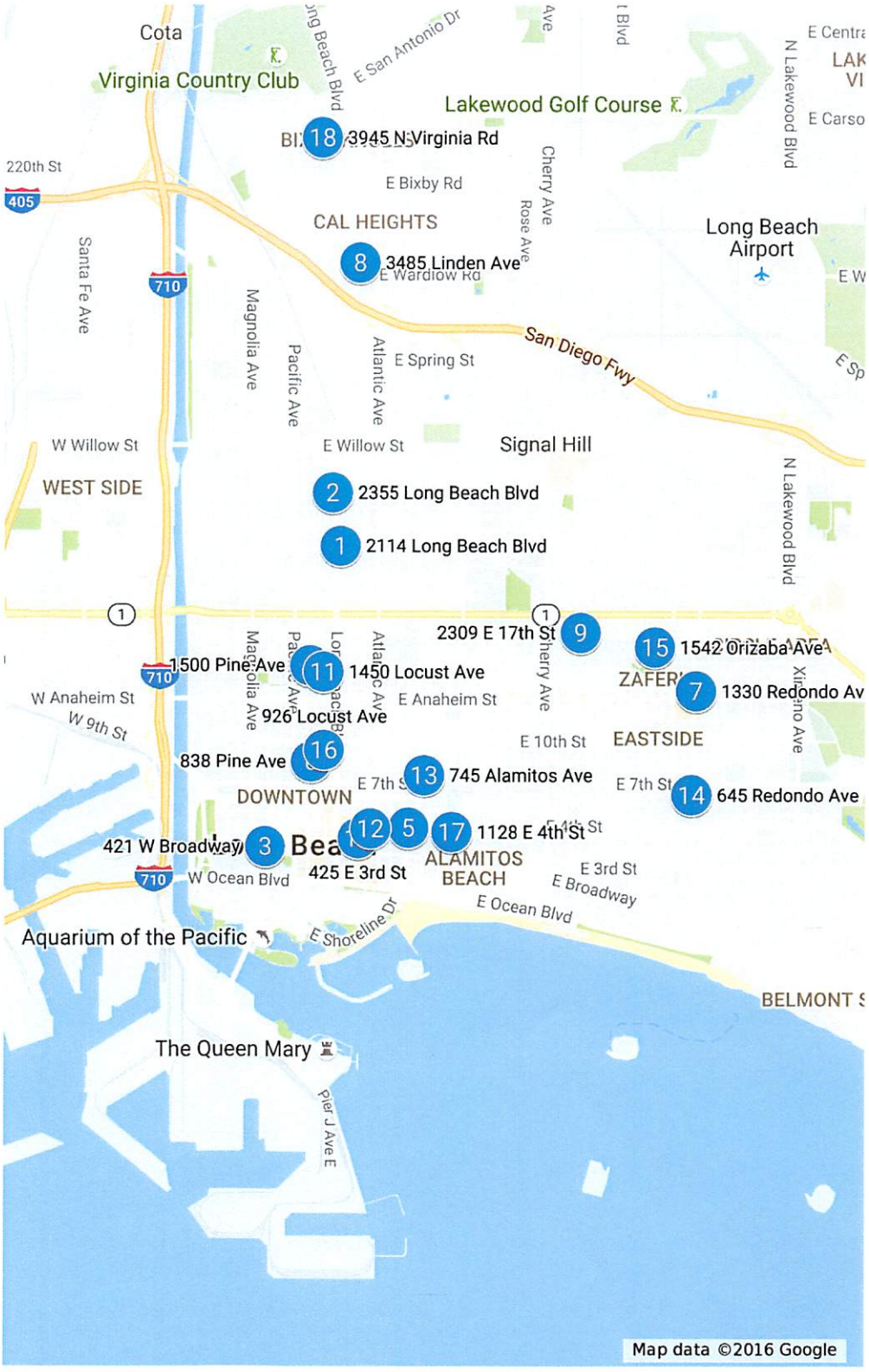
CITY CLERK (REF. FILE #17-0134)

Density Bonus Projects in City of Long Beach, 1983-Present

Project Name and Address	Tenant Type	Density Bonus Units	Estimated?	Affordable Units	Total Units	Approval Date	Application #	Funding Source(s)	Expiration of Affordability	Data Source(s)
1. 2114 Long Beach Blvd	S	10		41	41	2012	SPR 1111-08			case file
2. Long Beach and Burnett Apartments (2355 Long Beach Blvd.)	F	11		36	46	2008			1/1/2064	Case File and Case Planner (SK)
3. The Lyon Project (Gallery 421)	F	26		26	291	2007	0411-18	Density Bonus	9/20/2062	Case File
4. Neo Zoe (1500 Pine Ave.)	F	2		22	22	2005	SPR 0504-01	Density Bonus		case file
5. Lofts on 4th (834 4th Street)		9	*	8	34	2004	0012-5			HCI list, case file (case file does not discuss density bonus)
6. 838 Pine Ave.		8		8	64	2004 condo conversion				case file
7. Vintage Senior Apts. (1330 Redondo)	S	5	*	20	20	1989	8904-8	Density Bonus	perpetuity	HCI list; total # from HE
8. 3485 Linden Ave.	S	8	*	29	29	1989	8901-19		perpetuity	HCI list; total # from HE
9. Poe Development (2309 E 17th Street)		3				1988	8803-49 (HA named as agency)			HCI list; no blue card
10. City Terrace (425 E. 3rd St.)	S/D	24	*	93	93	1987	490-87		perpetuity	HCI list; total # from HE
11. Seagate Village (1450 Locust)	S/D	4	**	44	93	1986; condo conversion 1990	253-85; (8902-28) (9008-16)		2050	**4 units on HCI list; 22 on blue card (waiting for file from archives)
12. Village Chateau (518 E. 4th St.)	S	7	*	28	28	1986	CUP 324-86; 0108-	Density Bonus	perpetuity	project status log
13. Seabreeze Apts. (745 Alamitos Ave.)	S	12		44	44	1985	145-85	HOME/Density Bonus	1/1/2061	HCI list; total # from HE and blue card
14. Redondo Plaza (645 Redondo)	S/D	23	*	40	88	1984	353-83	Density Bonus	perpetuity	HCI list; total # from HE
15. 1542 Orizaba Ave.	S	4	*	16	16	1984	31-84	Density Bonus	perpetuity	HCI list; total # from HE
16. Renaissance Terrace (926 Locust Ave)	S/F	27	*	90	102	1983	21-83 (HA named as agency)	Housing Authority; Density Bonus	perpetuity	HCI list; blue card
17. Magnolia Manor (1128 E. 4th St)	S	14	*	54	54	1983	128-83	Density Bonus	perpetuity	HCI list; total # from HE
18. 3945 Virginia	S	6	*	25	25	1983			perpetuity	HCI list; total # from HE
*estimate- # density bonus units not listed, but is listed in HCI density bonus tracking sheet. # based on assumption of full 35% DB										
Total Density Bonus Units since 2005		49								
Estimated Total Density Bonus Units		204								
								Development Services/Planning Bureau – November 2016		

Density Bonus Long Beach

Density Bonus Properties

1. 2114 Long Beach Blvd
2. 2355 Long Beach Blvd
3. 421 W Broadway
4. 1500 Pine Ave
5. 834 E 4th St
6. 838 Pine Ave
7. 1330 Redondo Ave
8. 3485 Linden Ave
9. 2309 E 17th St
10. 425 E 3rd St
11. 1450 Locust Ave
12. 518 E 4th St
13. 745 Alamitos Ave
14. 645 Redondo Ave
15. 1542 Orizaba Ave
16. 926 Locust Ave
17. 1128 E 4th St
18. 3945 N Virginia Rd