



City Council AGENDA REPORT

DATE: 1/5/2023

AGENDA OF: 1/10/2023

DEPARTMENT: Planning and Community Development

SUBJECT: Downtown Expansion Area Plan Amendment Revision - Report from Planning and Community Development (PL)

RECOMMENDATION: Accept the report and consider the information as part of the evaluation of any modifications to the Downtown Plan Expansion, including consideration of staff's recommendation to continue studying 1,800 units in the plan's draft Environmental Impact Report.

BACKGROUND: On June 14, 2022, the City Council provided direction regarding the development approach to study as part of the proposed Downtown Plan Expansion to the south of Laurel Street. The Council direction was as follows:

Direct staff to initiate work on an Environmental Impact Report (EIR) relating to the area identified for expansion of the boundary of the Downtown Plan, and provide that the design align with development Scenario 2 to include the following:

- A minimum of 1600 housing units;
- Maximum heights not to exceed on one taller building of 175 feet and not to exceed 150 feet on remaining, with each height being inclusive of anticipated height increases associated with a 50% density bonus and with the taller building elements comprising only a portion of shorter podium building forms;
- An option for auto circulation including the permanent closure of Spruce Street east of Pacific Avenue;
- The creation of new civic space in the closed Spruce Street right of way;
- Enhanced pedestrian connections between the Downtown and the beach;
- Options for the location of a permanent arena facility for the Santa Cruz Warriors, with a preferred location being on the south side of Spruce Street between Pacific Avenue and Front Street.

The Council direction followed multiple community outreach efforts and followed discussions with the Planning Commission and Downtown Commission. The Council action also took into consideration the 3,736 new residential units that need to be able to be built during the Sixth Housing Element Cycle (discussed below in more detail) spanning the eight years from 2024 through 2031. More information about what the Council considered in its deliberations is available in the attached agenda report from the June 14, 2022 Council meeting.

This report is prepared in response to potential revisions to the Council’s June 14, 2022 direction, as articulated in the separate report from Mayor Keeley and Councilmember Newsome. The revisions proposed in that separate report include the following:

- 1) A policy that sets the maximum number of stories at 12, inclusive of density bonus (a state mandate that allows for development to exceed local regulations such as the maximum number of residential units, maximum building heights, and minimum setbacks);
- 2) A requirement that 20% of the *total* units be affordable. The City’s current requirement for affordable units that are included within new residential development projects (called the “inclusionary” requirements) calls for 20% of the units in a project to be affordable, but under state law, as discussed below in more detail, the affordability requirement does not apply to additional units that a developer receives pursuant to the state density bonus; and
- 3) A maximum total of 1,600 residential units, inclusive of density bonus.

DISCUSSION:

12-Story Maximum, Inclusive of Density Bonus – Legal and Practical Considerations

As noted above, the Council is considering whether to modify the previously-directed height allowances in favor of buildings across the district having a maximum of 12 stories, including any additional stories that a project may achieve under the state density bonus. For market-rate residential projects (meaning non-100% affordable developments) that include specified percentages of affordable housing, state density bonus law allows for those projects to incorporate up to 50% more units than what would otherwise be allowed by the applicable local (general plan) regulations and to deviate from certain typical development standards to accommodate those additional units. So a project site that could allow for up to 100 residential units under standard rules could use the state density bonus law to include up to 150 residential units, while also deviating from standards like maximum building height or minimum setbacks.

When considering the variations (such as height or setbacks) being requested by a developer, the state law and associated case law give deference to how a project is proposed by an applicant, not how a city or neighborhood desire the development to be designed. Therefore, outside a concurrently-approved development agreement (discussed below in more detail), it will be very difficult for the Downtown Plan Expansion to *ensure* that the maximum number of stories on new buildings will be 12 stories. Some tools can be used to promote and encourage a maximum of 12-stories as the outcome of projects that use a 50% density bonus. However, some projects, particularly 100% affordable projects that can use density bonus for *unlimited* density in the plan area (as opposed to the 50% density increase limit for market-rate projects), could potentially go above 12 stories. And depending on a developer’s proposed approach to a density bonus, some market-rate project proponents could potentially go above 12 stories too, given the State’s deference to how developers propose projects pursuant to state law and case law.

Furthermore, staff can craft policies that would make 12 stories the most likely outcome for a 50% density bonus project, if a developer chooses to go above the typical maximum, 85-foot height limit for traditional wood-frame construction. (Given the cost increases associated with

going above 85 feet in height due to changes in construction materials and regulations, some developers may choose to not exceed that height, as was the case with recent developments along Front Street and Pacific Avenue. However, with the views of the Monterey Bay, San Lorenzo River, downtown, and Santa Cruz Mountains that would be provided by taller development in the project area, it is expected that at least some developers will incur the additional development costs associated with the greater building heights, as those costs will be offset by increased rental or sales prices.)

While encouraging the 12-story maximum will be a challenging task that will likely require a variety of paths to increase the likelihood of a 12-story maximum, an approach that could definitively limit new buildings to 12 stories is a development agreement. Part 25 of Chapter 24.08 of the Zoning Code and Section [65864](#) of the Government Code speak to development agreements, which can be mutually agreed upon by a property owner and the City through an ordinance adopted by the City Council at a noticed public meeting and following a recommendation from the Planning Commission. Development agreements specify a range of topics, one of which could be a maximum of 12 stories, but a key factor is that the agreements must be just that – agreements. The City cannot impose a development agreement on a site, so the City and the property owners must both agree on the terms and conditions. For a property owner to be willing to agree to limit themselves to 12 stories in height, inclusive of any density bonus height allowances, they would be seeking other favorable terms from the City as part of the agreement.

12-Story Maximum, Inclusive of Density Bonus – Policy Considerations

As noted above, construction costs increase above 85 feet in height. Thus, to go higher than 85 feet, many developers have traditionally wanted to include a substantial number of stories above the 85-foot threshold in order to gain more value from the sale or rent of spaces above that level. That said, various factors can affect that traditional approach.

Conversations with potential developers will be critical to understand development feasibility of a 12-story maximum. An initial, preliminary conversation with one developer in the area alluded to the potential for 12 stories to be viable if the project were 100% market rate, with the associated affordable units provided off-site.

Variation in building heights and architectural designs at the top of buildings are key considerations of a distinct, attractive, and unique skyline that will define Santa Cruz. If all properties in the plan area were developed at the maximum 12-story limit, the lack of variation in the height of the skyline would provide a relatively monotonous feel. As discussed above, given the change in construction type above 85 feet in building height and the associated costs with that construction, some developers may choose to not exceed 85 feet. Also, as discussed above, some developers may pursue a density bonus approach that could create some variation in building height. These variations could help promote visual interest in the skyline.

Regardless of the ultimate building heights, it will be imperative for policies in the plan to require distinctive building tops to provide an attractive skyline. These policies will also be critical regardless of ultimate building heights and can hopefully help the Council and the public better visualize the ultimate outcomes. While they do not show the potential architectural character of the building tops, massing diagrams developed from three-dimensional modeling do show the concept of taller building elements being only a portion of the overall site. Those diagrams are available online at

<https://www.cityofsantacruz.com/home/showpublisheddocument/88906/637868427797900000>
and

<https://www.cityofsantacruz.com/home/showpublisheddocument/90256/637940209601800000>.

20% of the Total Units Being Affordable – Legal and Policy Considerations

As noted above, the Council is also considering whether to require that 20% of the *total* number of units across the project area be affordable. The City’s affordable housing (inclusionary) ordinance requires that 20% of the units in new projects are affordable to families earning 80% of the Area Median Income (AMI). Pursuant to state law and as confirmed in the *Latinos Unidos del Valle de Napa vs. County of Napa*, cities’ local affordable housing requirements count towards a project’s eligibility for a state density bonus.

Cities cannot require that the affordable housing necessary to achieve a state density bonus be applied on top of or in addition to the local affordable housing requirements. Instead, the two requirements (local affordable housing requirements and affordable housing requirements to be eligible for the density bonus) overlap, and they cannot be stacked on one another. (For a more detailed explanation of this topic, see the attached memo entitled “Memorandum on Inclusionary Units in a Density Bonus Project.”)

Additionally, state law requires and the City’s local affordable housing ordinance provides alternative approaches to achieving the local affordable housing requirements. Section 24.16.030 of the Zoning Code specifies nine different ways to comply with the City’s affordable housing requirements other than providing the units on-site.

Given the above, if the Council provides direction to include 20% of the total units in the project area as affordable, staff would evaluate a range of options for how either a project could achieve the full 20% of units as affordable, inclusive of density bonus units, or how the project could contribute to achieving the full 20% of the total units as affordable across the entire project area, for example, through off-site, 100% affordable housing projects. Providing a range of options will increase the likelihood that one of the options could be financially viable for a project.

Staff are preparing an analysis of housing barriers for the State Department of Housing and Community Development (HCD) as part of the mentioned Sixth Cycle Housing Element Update¹, and the timing of the housing barrier analysis is such that it will be submitted to HCD before any policy associated with the Downtown Plan takes effect. That said, HCD could, even before our next Housing Element update, require that we review whether the policy is a barrier to housing production. Regardless of HCD’s position, it will be important for the City to review, vet, and craft various approaches and the policy options carefully to ensure they are not deemed a barrier to housing production.

Maximum of 1,600 Units – Potential Policy Change in the Plan – Legal & Practical Considerations

The final policy change being contemplated under the separate and associated agenda report from Mayor Keeley and Councilmember Newsome is to have a maximum total number of units

¹ A required element of the City’s general plan that must be updated every eight years, per state law, to show how and where the City will accommodate the City’s Regional Housing Needs Allocation, or RHNA, as well as how the City will affirmatively further fair housing.

in the plan of 1,600 units. This subsection and the ensuing subsection focus on the potential policy change related to the maximum number of units included in the plan. That policy consideration is separate and distinct from the number of units evaluated in the EIR being prepared under the California Environmental Quality Act (CEQA). The CEQA approach and recommendation are evaluated under a separate subheading.

Recent state laws have invalidated cities' growth caps. Specifically, with the Housing Crisis Act of 2019, the state legislature suspended the ability of cities and counties to establish or implement any provision that: (i) "Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated within all or a portion of the affected county or affected city," (ii) "Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period," or (iii) "Limits the population of the affected county or affected city." (Government Code, § 66300, subdivision (b)(1)(D)). That said, staff believes that, should the Council provide direction to reduce the number of units in the plan area to a maximum of 1,600 units, staff can *generally* achieve that within the confines of the state law, with two key caveats.

With direction to have a maximum of 1,600 units in the plan area, the expected approach would be to include general plan and zoning allowances for all properties throughout the plan area that accommodate a total of 1,066 units. This would assume that market-rate projects all take advantage of a 50% density bonus, thereby resulting in a total of 1,599 units. This approach should be consistent with state law; however, two key caveats apply.

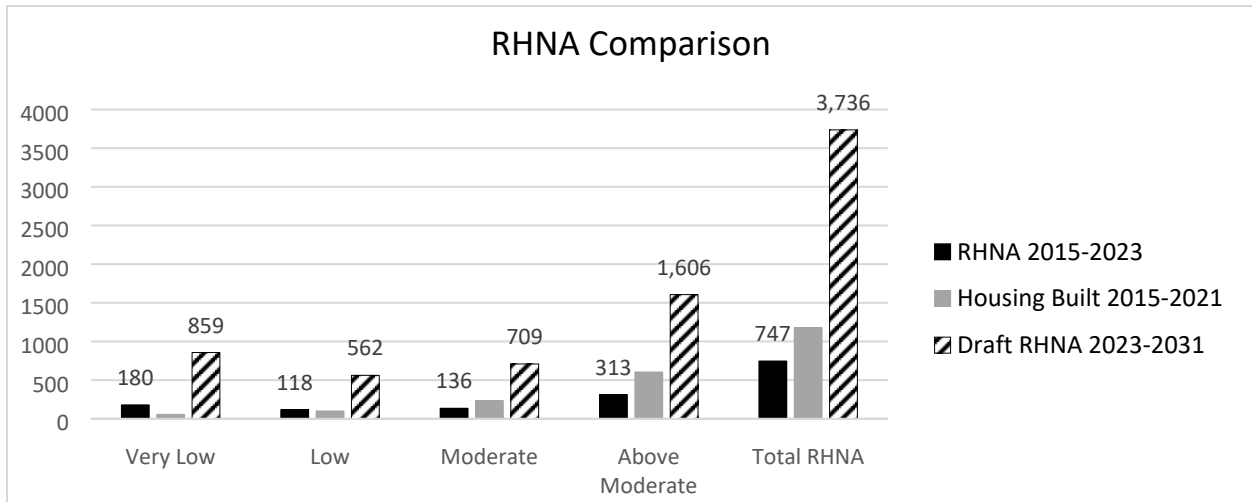
First, as noted before, 100% affordable projects in this area can use the density bonus to have unlimited density. Therefore, if a 100% affordable project chose to increase its unit count by more than 50%, then the City could not stop the other sites from developing to the full potential allowed by their general plan. To do so would be equivalent to establishing a residential cap, which is not allowed per state law. Thus, the total number of units could eventually exceed 1,600 through 100% affordable projects doing more than a 50% density bonus.

Second, the development intensities for the area are currently expected to be bound by Floor Area Ratio (FAR, the ratio of building square footage to site square footage), not the number of dwelling units per acre. Use of the FAR is expected to allow for more control over the overall heights (the Council's current direction) or the maximum number of stories (currently being considered by Council). The total building square footage that is allowed by a site's FAR is then translated to an expected number of dwelling units based on average unit size assumptions. While it is likely that, across the many projects in the plan area, the average unit sizes will be comparable to the assumed unit sizes, if enough projects included units that are less than the average expected unit size, then the total number of units in the project area could eventually exceed 1,600 units, and the City could not prevent the other sites from developing to the full potential allowed by their general plan.

In either of the caveats noted above, the maximum unit count in the plan would not be exceeded for many years, as most of the sites within the project area would need to redevelop, and such changes take considerable time. For comparison, the Council approved height increases in the Downtown Plan area roughly between Soquel Avenue and Laurel Streets in 2017, and of the many sites affected, only two are currently under construction with new development.

Maximum of 1,600 Units – Potential Policy Change in the Plan – Policy Considerations

The primary goal for the Downtown Expansion project is housing production, adding housing capacity that will benefit the City not just in the near term but also for many generations to come. The City’s next Sixth Housing Element Cycle Regional Housing Need Allocation (RHNA) requires the City to plan for 3,736 housing units between 2024 and 2031. By comparison, the current cycle of the RHNA required the City to accommodate 747 new housing units between 2015 and 2023.



The City’s consultants on the Housing Element Update are still preparing the draft sites inventory that will show how and where the City will accommodate the requisite 3,736 units in a manner that affirmatively furthers fair housing. However, preliminary indications from the consultant are that the City will need to add housing capacity above and beyond what is contained in the General Plan 2030. Thus, a reduction in housing capacity in the Downtown Expansion Area will result in the need to expand housing capacity elsewhere in the City, a task that has regularly proven controversial when general plan capacity increases have been proposed and even when density bonus projects are proposed on individual sites.

The Downtown Expansion Area represents a rare opportunity to plan for a significant amount of new housing in a location that is among the most sustainable sites in the region to grow based on its proximity to jobs, amenities, recreation, and transportation options.

The grants funding a portion of the work for the Downtown Plan Expansion require that the project facilitate the production of housing. If 1,066 units are contemplated in the plan (in order for the maximum to be 1,600 units with the application of a 50% density bonus on all projects), then staff does expect that this would represent an increase in the development capacity, albeit modest, and staff expects that the increase, coupled with the plan updates and environmental work, could meet the grant requirements related to facilitation of housing production.

CEQA Analysis – Staff Recommendation

The analyses for the Downtown Plan Expansion EIR have been underway for nearly seven months. Based on the June 14, 2022 direction from the City Council, where a minimum of 1,600 units were directed and where development parameters for various buildings were provided, the CEQA consultants have been preparing technical reports based on a build-out of 1,800 units.

The EIR can continue to study the 1,800 units, which is the most expeditious and cost-effective way to proceed, and the Council could still choose to certify the EIR and approve the plan with an expected maximum of 1,600-units.

CEQA requires that EIRs analyze project alternatives, and a project alternative can specifically analyze the development parameters (12-story maximum, 20% of total units being affordable, and a maximum of 1,600-units) contemplated in the associated report from the Mayor and Councilmember Newsome. Keeping the EIR analyses of 1,800 units is not only the most expeditious and cost-effective approach, it also provides the City with more options as the Housing Element Update proceeds (and for the Warriors, as further discussed later). For example, if increasing housing capacity elsewhere in the City proves too challenging or controversial, any portion of the additional 200 units (the difference between the currently-studied 1,800 units and the contemplated 1,600-unit maximum) could be considered for incorporation into the plan area as the two processes parallel one another.

For the reasons stated above, staff recommends continuing to study 1,800 units, providing important options as the Housing Element Update proceeds. Council will still have full authority to choose what it ultimately certifies for the EIR and approves for the project.

Santa Cruz Warriors Arena

While housing production is the top goal of the project, working with the Santa Cruz Warriors to develop an approach that can facilitate development of a permanent arena is another key goal. As the project progresses, the Warriors will have more information about the viability of the arena development, particularly because it relates to many external variables such as costs of land, labor, and materials; interest rates; and the housing market. The housing market is included as a factor, because the Warriors are working with landowners and developers to have housing projects help to fund the construction of the arena. Reducing the number of units studied in the EIR would limit the future flexibility that the City may want to leverage (for example, through increased unit counts on one or more specific sites) to help the Warriors finance the construction of their arena.

Health In All Policies

The project is consistent with the Health in All Policies pillars of equity, public health, and sustainability in that it would encourage creation of both needed housing and economic opportunities and foster greater accessibility between the Downtown, San Lorenzo River, and beach areas. Development in the Downtown area is in close proximity to transit, jobs, amenities, and a wide range of entertainment and recreational activities, making it one of the most sustainable places to grow in the region. From an equity perspective, the project area will include space for new inclusionary low-income housing, including replacement housing for any existing low- and very-low income residents. This project encourages active transportation modes that support both personal health and environmental sustainability.

CEQA

The Downtown Plan Expansion will require environmental review prior to Council's final consideration, for which the City is preparing an EIR. The direction contemplated in this report and the associated report from Mayor Keeley and Councilmember Newsome, in and of itself, does not require CEQA clearance.

FISCAL IMPACT: Staff continues to address local housing needs and take advantage of statewide funding opportunities to further this success. In October of 2020, the City Council directed staff to apply for a Regional Early Action Planning (REAP) grant to expand the current boundaries of the Downtown Plan to accommodate additional residential and commercial development capacity. The project proposal met the main goal of the REAP grant funding source to accelerate housing production and received the full funding allocation of \$300,000 in January of 2021. An additional \$150,000 in project funding was also approved through the Local Early Action Planning grant (LEAP). Because the LEAP funding requires action by September of this year, staff is coordinating with the applicable state agencies to transfer the \$150,000 in LEAP funds from the Downtown Plan Expansion to the Housing Element Update. While the project to which the funds apply could change, the grant amount remains the same.

The total project cost for the Downtown Plan Expansion is currently scoped to be \$555,000. Beyond the grants awarded for this project, totaling \$450,000 (or \$300,000 if the LEAP money is transferred to the Housing Element Update), general fund sources will be used to cover the additional costs. The City is considering creative solutions to allow the beneficiaries of the plan to reimburse City's general fund costs towards the funding of the plan on a pro-rated basis, including staffing costs associated with the development of the plan, and policies will be considered for incorporation into the final plan to address these reimbursements.

As the project area is built out, staff anticipates that the additional property, admissions, and sales taxes, together with any special assessments elected for the project area, will have positive impacts on the City's long-term fiscal conditions. Provision of services to the area will result in additional costs to the City, but given the location and efficiency of land uses under consideration, revenues should be expected to exceed expenses. Creating a new urban destination with distinct urban character and a major events venue of regional importance could make this project the center of a highly successful economic development endeavor, bringing residents and visitors from throughout the region into the downtown and helping them navigate between key points of interest at the beach, river levee, and Downtown.

A reduction in the overall number of units, as considered in the related report, would result in reduced property and sales taxes. However, the City also provides services to new residents, and general fund dollars are used to provide those services. The specific net fiscal impacts of a reduction in units are unknown; however, units not provided in this central, downtown location will need to be provided elsewhere in the City (as discussed above with the RHNA analysis), and provision of services to units outside the downtown could be more costly to the City than provision of services in such a central location.

Detailed and precise information on the longer-term fiscal implications will not be fully known until new uses and buildings are constructed and operating.

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ATTACHMENTS:

1. June 14, 2022 City Council Agenda Report
2. Memorandum on Inclusionary Units in a Density Bonus Project