

Summary of Motion to Return Land Use Jurisdiction Over Multi-Family Lots to Our City i

Please have your council or organization pass this motion as soon as possible. Please let me know as you pass it, so that I can add your organization to the list of supporters. If your organization is a Neighborhood Council, please submit to the City as a "Community Impact Statement" once you have passed it. Motion written by Valerie J. Olive of the Greater Valley Glen Council.

MOTION TO RETURN LAND USE JURISDICTION OVER MULTI-FAMILY LOTS TO OUR CITY:
STATE LAW SB 1818 MUST BE REPEALED
PASSAGE OF PENDING STATE BILL SB 435 MUST BE OPPOSED
AND
LOCAL ORDINANCES IMPLEMENTING SB 1818 MUST BE MODIFIED BEFORE THEY BECOME LAW.
(Attached Rationale and Motion is incorporated by reference)

A. SB 1818: State Law That Modified California Government Code 65915 Effective January 2005.
An Impermissible Taking of Land-use Jurisdiction from Our City Over Multi-Family Lots

Resolved that SB 1818 must be repealed and replaced with new affordable housing legislation written by the City that incorporates density bonus provisions and incentives in a manner that actually creates sustainable affordable housing. These local ordinances must be implemented in accordance with new specific plans to be devised in consultation with Certified Neighborhood Councils and the City Council. These new specific plans must designate the frequency and placement of density bonus projects while carefully considering (1) the overall infrastructure limitations of our city, (2) the infrastructure limitations of particular neighborhoods and (3) the character of that neighborhood.

Resolved that the new local legislation that will replace SB 1818 not contain any of the following:

- The moderate-income for sale aspect of SB 1818,
- The minimal parking requirements in SB 1818,
- The provision awarding attorney fees to developer in SB 1818.

B. SB 435: Currently Pending Before the State Senate
*Rewards Developers with Even Larger Potential Profits,
Leaves Neighbors Without Meaningful Recourse*

Resolved that SB 435 not become state law because:

- It eliminates the requirement that the developer demonstrate that receiving his requested zoning waivers (incentives) is necessary to make building the affordable units economically feasible,
- It proposes to reward the developer with a 4th zoning waiver (incentive) regardless of whether he needs it to make the affordable units economically viable,
- It proposes to broaden the application of SB 1818 to senior citizen mobile homes and all common interest developments.

C. Proposed Local Ordinances Implementing SB 1818 Must Be Modified Before They Become Law

*The City Seeks to Broaden Application of SB 1818 and Provide Largest Profit Margins to
Developers Building For-Sale Moderate Income & "Transit Corridor" Density Projects
Without Producing a Significant or Sustainable Supply of Affordable Housing*

Resolved that the following sections/aspects of the proposed local ordinances implementing SB 1818 not be allowed to become law:

- Los Angeles Municipal Code 12.22.A 25 (e) (2) because it proposes to apply the density bonus to any lot qualifying for 3 or more units under its current zoning. The code must be modified to conform with SB 1818's clear intent to apply to 5 or more units only,

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- Los Angeles Municipal Code 12.22.A.25 (e) (8) because a further reduction of parking requirements below the already unacceptable requirements of SB 1818 must not be available as an additional zoning waiver within the menu of incentives,
- Los Angeles Municipal Code 12.22.A (f) (5) because it quadruples (from 5% to 20%) the base density bonus on for sale moderate-income density bonus projects while requiring the same number of affordable units (10%) This is the only category of density bonus project where the affordable units can be re-sold immediately at market-rate, but that profit must be shared with the City. The code must be modified to conform with the provisions of SB 1818 to provide a base density bonus of 5% to those for sale projects setting aside 10% of its units for moderate-income households,
- Los Angeles Municipal Code 12.22.A (d) (2) because it rewards the developer with 40% more units than allowed by the lot's current zoning while requiring no additional affordable units if the project is built within 1500' of a "transit corridor/major employment center."

Resolved that the following procedural protections for the neighbors of density bonus projects be incorporated into the proposed local ordinances implementing SB 1818:

- Provide notice and right to appeal regarding all proposed density bonus projects to all owners and occupants within 500' and the Certified Neighborhood Council,
- Notice of hearing must be mailed 30 days prior to that hearing and right to appeal must be for 30 days from date of mailing,
- The appropriate environmental report, specifically including an analysis of whether the project will have a "specific adverse impact" within the meaning of SB 1818, must be completed and made available to the public as of the date that notice is mailed.

Resolved that the following protections for adjacent R-1 (single family) property occupants be incorporated into the proposed local ordinances implementing SB 1818:

- The waiver of setback incentive become unavailable for any lot line shared with an R-1 (single-family) zoned property,
- That no balconies be allowed on the side of a project facing an R-1 (single-family) zoned property,
- That the developer must install and maintain mature trees on any lot line shared with an R-1 lot in a manner that provides an affective visual screen whenever the density bonus project is 2 stories or greater. These trees must be at least 75% of the height of the structure. The last provision shall be inserted into a covenant that will run with the building in perpetuity.

Your Immediate Help is Needed!

This is a very important and very time-sensitive issue. Your immediate assistance is needed to stop the State law that has taken land use jurisdiction from our city over every multiple-family zoned lot. If we allow state law SB 1818 to stand as it is and do not stop pending state bill SB 435 from becoming law, we will be left with no realistic recourse as our city begins to look like Manhattan. Please contact your state assemblypersons and senators to voice your support!

The proposed city ordinances implementing SB 1818 will be considered by the Planning Commission at a Public Hearing at City Hall, Room 1010, 200 N. Spring St., Los Angeles this Thursday, June 9 at 8:30 A.M or after. Your attendance is needed! The proposed ordinances will subsequently go before the City Council for approval. Please contact your City Councilperson's Office as soon as possible to voice your opposition to the City's proposed expansion of SB 1818.

Rationale and Motion to Return Land Use Jurisdiction Over Multi-Family Lots to Our City 1

I. INTRODUCTION: DENSITY HOUSING BONUS, OR BOGUS?

Imagine yourself the owner of a recently purchased single-family home. Your rear lot line is shared with a single-story duplex. Your next-door neighbors, like you, own single-family homes. Like you, they share their rear lot lines with one-story multiple family dwellings. Your home is located on a quiet residential street and the multiple family dwellings behind you are located on a non-major thoroughfare.

Now comes the rude awakening: the duplex behind your house is sold. Shortly thereafter, the City notifies you that they have approved a five-story condominium complex containing thirteen units (the lot is 7200 square feet). Thirteen families will be living in the same space where two lived before. Balconies facing your home will have a bird's eye view of your backyard. The building will only be 12' from your rear lot line (4' if your house happens to be next to the project). It will feel like there is a hotel in your backyard.

By the time you receive the notice, only a week remains to appeal this decision to the Planning Committee. You and your neighbors scramble to appeal. You are shocked to learn that the state law authorizing the project behind you effectively leaves you no recourse, legal or otherwise... Even if the City agrees with your concerns, state law rules, and the City Planning Committee is powerless to do anything!

You decide to sell your home, only to discover that your equity has evaporated and you have to find a buyer willing to live in a fish bowl.

II. BRIEF HISTORY

Unbelievably, this scenario can happen on any multi-family zoned lot in the State and will affect all nearby single-family zoned lots. Last January, the State passed a bill that effectively took away local jurisdiction over land-use and planning for *all* multi-family lots. SB 1818 granted the developer of any multi-family lot the ability to build a "density bonus" project. Because it mandated that a whole series of zoning waivers be granted as a "matter of right," the bill effectively took local jurisdiction over these "density bonus" projects away from our city. And to intimidate the City into automatically granting these zoning waivers, the State included a provision stating that if a developer took the City to court over this issue and won, the City would be liable for the developer's legal fees.

The State mandated that our city create a general land use plan and then created SB 1818, which essentially trumped that plan. It is already the case that the housing element of our city's general plan is subject to state approval, whereas the specific plans, which mandate the zoning of any given neighborhood, lies within the discretion of our city planners. No longer will the officials we elect to run our city have control over the most local of issues, land use and planning. SB 1818 sets a dangerous precedent. It is entirely conceivable that single-family residential zoning will be the next casualty. It is highly significant that SB 1818 was introduced by State Senator Hollingsworth (San Bernardino) and co-sponsored by the California Association of Realtors (C.A.R.), a group whose financial interests are very much allied with developers. C.A.R. and a state senator with no accountability to Los Angeles voters co-sponsored this bill. While Senator Hollingsworth's bill may constitute a bonus in Riverside, its application in Bel-Air would be bogus! What works to alleviate a shortage of affordable housing in Crescent City will clearly be different than what works in Bel-Air. More locally, what works in Silver Lake is necessarily different than what will work in West Hills. It is simply not possible to fashion a "one size fits all" solution to our affordable housing shortage.

A bill is currently pending in the State Senate that makes a bad situation even worse. SB 435, authored by the same coalition that made SB 1818 law, awards developers with an additional zoning waiver (incentive) and eliminates SB 1818's requirement that the developer prove that the zoning waivers he has chosen (incentives) are necessary to make building the affordable units economically viable.

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On May 16th City Planning granted additional perks to developers beyond those offered in SB 1818 in their proposed ordinances implementing SB 1818.

- First, the City has proposed that the “density bonus” be applied to all developments of *3 or more*, whereas SB 1818 clearly requires that it be applied to developments of *5 or more*.
- Second, the City made available a further reduction in parking below the already insufficient parking requirements of SB 1818.
- Third, the City failed to incorporate any protections for adjacent single-family lots into the code.
- Fourth, the City made it practically impossible for neighbors to challenge a development.
- Fifth, the City offered a 40% increase the amount of units allowable above the lot’s zoning requirements without requiring any additional affordable units if the project is located in a “transit corridor/major employment center” (See Appendix, Graphs A1, A2 and A3).
- Sixth, the City quadrupled (a 400% increase) the amount of units allowable above the lot’s zoning requirements under SB 1818 without requiring any greater number of affordable units if the project is a for sale moderate-income project, making this type of development the most financially lucrative for developers by far (See Appendix, Graph B).

Under SB 1818, there are no restrictions on the re-sale of a moderate-income unit. The only requirement is that the developer must initially sell that unit to a qualified moderate-income buyer¹ at a maximum allowable price.² That buyer is then free to re-sell that property immediately at market value to anyone, but must divide his or her profit with the City. In light of that fact, it is no mystery why the City has chosen to make building for sale moderate-income projects the most financially attractive option under the “density bonus” program.

Under the banner of affordable housing, the State has created a scheme to produce more units in less space that will not cost them a dime.³ The State has effectively bought the City’s complicity because the City stands to profit from these projects, as do the developers and Realtors. Worst of all, this scheme, as proposed, is very unlikely to produce a significant or sustainable supply of affordable housing because it is designed to promote for sale moderate-income projects. By their own terms, those projects cannot create sustainable affordable housing and will most certainly create a cottage industry based on fraud and greed that will proliferate as those who stand to gain realize that the City has no reason or ability to stop them.

The City, the developers and the Realtors will profit while adjacent property owners and our city at large will pay the price.

- First, billions of dollars in equity will be lost across California by single-family homeowners as their properties are overshadowed by taller, denser, closer, more cramped developments whose woefully inadequate parking lots will inevitably turn their quiet residential streets into overflow parking lots.
- Second, our physical and financial infrastructure is simply not up to the task. While we live in a city with many wonderful and unique attributes, cracks in the foundation are obvious. To say that the infrastructure of our city is overburdened would be an understatement. We have the worst air in the nation, our streets and freeways are in a state of disrepair, our traffic problems are world renown, we recently suffered black-outs due to a shortage of electricity, our water-supply is tenuous, we don’t have enough police, firemen or paramedics and we are constantly being asked to float bonds to keep our struggling school system afloat. If SB 1818 is not repealed and density

¹ For example, a family of four earning \$78,600 or less annually qualifies as “moderate income.” Furthermore, there is no prohibition within any of the applicable legislation preventing the developer from selling that affordable unit to someone related to him.

² For example, a two-bedroom, moderate-income affordable unit must be sold for \$202,939 or less.

³ If the State had really wanted to support sustainable affordable housing, they would have offered tax incentives/credits to those developers that produced affordable units. For example, the State could have offered a tax credit against capital gains for developers of for-sale units and a credit against rental income for developers of for-rent projects and/or financial assistance for 1st time home buyers.

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bonus projects begin proliferate, it will have its desired effect: more people in less space. These people will consume more water and power, create more smog and traffic, send their children to our overcrowded schools and, as the population in an area rises, a rise in emergencies and crime is bound to follow. What possible good can come of creating a more dense population, when the people who already live here can't even get reliable *basic* services? Significantly, the price tag of supplying these additional households with basic services will cost more than the reduced property tax revenues they generate, further straining our already overburdened government revenues.

If these laws were really designed to create sustainable affordable housing in a rational way, they should be supported. However, under SB 1818 there are no limits on either the (1) overall amount of these projects, nor (2) the frequency of these projects in a neighborhood. Because for sale moderate-income projects reward the fattest profit margins to developers, that type of development will doubtlessly be the most prevalent. Any person earning up to 120% of the average income in Los Angeles qualifies as a moderate-income buyer. Therefore, these measures will not result in affordable housing for those who need it the most. Furthermore, because they can be re-sold at any time at market value, these for sale moderate-income projects will not create a sustainable supply of housing either. Finally, the solution to this problem needs to be fashioned by *our* elected officials in a way that actually creates sustainable affordable housing in a controlled, rational way that does not break down our infrastructure, or the destroy the character of our neighborhoods.

III. MOTION TO RETURN LAND USE JURISDICTION OVER MULTI-FAMILY LOTS TO OUR CITY...

A. SB 1818: State Law That Modified California Government Code 65915 Effective January 2005

1. The overall problems with SB 1818

Whereas SB 1818:

- Attempts to solve the affordable housing crisis with a "one size fits all" approach,
- Eliminates local discretion, constitutes jurisdictional over-reaching by the State into the purely local issue of land use and sets a very dangerous precedent,
- Destroys predictability for neighboring property owners based on current zoning,
- Will overburden our physical and financial infrastructures and thwart our specific plans,
- Will cost adjacent single-family homeowners untold billions in equity:

Resolved that SB 1818 must be repealed and replaced with new affordable housing legislation written by the City that incorporates density bonus provisions and incentives in a manner that creates sustainable affordable housing. These local ordinances must be implemented in accordance with new specific plans to be devised in consultation with Certified Neighborhood Councils and the City Council. These new specific plans must designate the frequency and placement of these projects while carefully considering (1) the overall infrastructure limitations of our city, (2) the infrastructure limitations of particular neighborhoods and (3) the character of that neighborhood.

2. Specific aspects of SB 1818 that are particularly troubling:

a). The moderate-income for sale aspect of SB 1818

Whereas SB 1818:

- Cannot and will not create a sustainable supply of affordable housing because it provides no restrictions whatsoever on the re-sale of an affordable unit in a for sale moderate-income project,
- Does not ensure that a qualified buyer of a for sale unit will be able to pay the Homeowner Association Dues when they inevitably rise,
- Will doubtlessly create a cottage industry based on fraud and greed:

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Resolved that the moderate-income for sale aspect of SB 1818 must be repealed and not incorporated into the new local legislation that will replace SB 1818.

b) Parking

Whereas the current parking requirements under SB 1818 are completely inappropriate in our city and will most certainly lead to the surrounding neighborhoods becoming overflow parking lots for the additional vehicles if they are applied to the entire project:

Resolved: that the minimal parking requirements in SB 1818 be repealed, and if they are incorporated into the new local legislation that must replace SB 1818, these minimal parking requirements should only be applied to the affordable units, not the entire development.

c) Attorney Fee Provision

Whereas SB 1818 prevents the City from denying any application for a density bonus except in the most clear cut cases of a specific adverse impact or lack of economic necessity for the incentives requested:

Resolved that provision awarding attorney fees to developer in SB 1818 be repealed and not incorporated into the new local legislation that must replace SB 1818.

B. SB 435: Currently Pending Before the State Senate

1. SB 435 seeks to award the developer greater opportunities to override current zoning ("incentives") than is necessary to make building the affordable units profitable.

Whereas:

- Under SB 1818 only two grounds are available to the city for denying or even modifying a developer's request for a 35% density bonus and three incentives:
 - A specific adverse effect within the narrow meaning of SB 1818 will result or
 - The zoning waivers requested (incentives) are not necessary to provide for affordable housing costs,
- SB 435 seeks to eliminate the economic necessity provision, leaving one rarely applicable avenue of discretion (the "specific adverse impact" as narrowly defined by SB 1818),
- It is wholly unjustifiable to allow more zoning elements to be over-ridden than necessary to make building the affordable units economically feasible:

Resolved that SB 435 not become state law because it eliminates the requirement that the developer demonstrate that receiving his requested zoning waivers (incentives) are necessary to make building the affordable units economically feasible.

2. SB 435 rewards developer with 4th zoning waiver (incentive) if he uses 50% or less of the density bonus.

Whereas:

- Under SB 1818, a developer is already entitled, as "matter of right," to the following three options when building on any multi-family zoned lot in the State:
 - 35% more units than allowable under the lot's current zoning,
 - Reduced parking requirements for the *entire development*
 - 0-1 bedrooms = 1 onsite parking space
 - 2-3 bedrooms = 2 onsite parking spaces
 - 4+ bedrooms = 3 onsite parking spaces,
 - Up to three of the following eight "incentives" as currently proposed by City Planning:
 - Waiver of setback/yard requirements
 - Waiver of lot coverage requirements
 - Waiver of lot width requirements

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- Waiver of floor area requirements
- Waiver of open space requirements
- Waiver of building height requirements
- Inclusion of alley and street dedications for purposes of calculating density
- Further waiver of required parking restrictions below that already available:

Resolved that SB 435 not become state law because it proposes to reward the developer with a 4th zoning waiver (incentive) regardless of whether he needs it to make the affordable units economically viable.

3. SB 435 seeks to broaden application of SB 1818.

Whereas SB 1818 already applies to nearly every conceivable type of multi-family dwelling and also includes subdivisions, senior citizen projects and child care facilities:

Resolved that SB 435 not become state law because it proposes to broaden the application of SB 1818 to senior citizen mobile homes and all common interest developments.

C. Local Implementing Ordinances as Currently Proposed

1. Los Angeles Municipal Code 12.22.A.25 (e) (2): Applies density bonus to 3 or more units.

Whereas:

- The clear intent of SB 1818 is that it only be applied to *5 or more* units,
- The City has gone one step further than required by State law by proposing that the density bonus be applied to *3 or more* units,
- Application of the density bonus to either 3 or 4 unit projects can only result in a maximum of 1 affordable unit,
- Lots that are eligible for 3 or 4 units are more likely to lie adjacent to single family homes (R-1) than those lots qualifying for 5 or more units,
- A much larger group of property owners are potentially affected by applying the density bonus to 3 or 4 unit eligible lots while producing relatively few affordable units:

Resolved that Los Angeles Municipal Code 12.22.A.25 (e) (2) be modified from the proposed local ordinances to ensure that the density bonus will not be applied to any lot eligible for less than 5 units under its current zoning when the proposed local ordinances become law.

2. Los Angeles Municipal Code 12.22.A.25 (e) (8): Proposed further reduction of SB 1818's already unrealistic parking requirements available as an incentive.

Whereas:

- SB 1818's parking requirements are wholly inappropriate in our city because they do not accommodate the amount of cars typically owned by a household,
- SB 1818 will already result in surrounding neighborhood becoming overflow parking lots:

Resolved that Los Angeles Municipal Code 12.22.A.25 (e) (8) be eliminated so that a further reduction in parking is not available within the menu of incentives when the proposed local ordinances become law.

3. Los Angeles Municipal Code 12.22.A (f) (5): Proposed moderate-income for sale provision, 400% increase in the amount of units available above the current zoning as required by SB 1818 while producing the same number of affordable units.

Whereas:

- While drastically increasing the amount of market-rate units, the City's proposed change does not increase the amount of affordable units produced (See Appendix, Graph B),

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- This change will profit only the developers, leaving neighbors to pay the price while making absolutely no additional progress towards the stated goal of producing more affordable units:

Resolved that Los Angeles Municipal Code 12.22.A (f) (5) be modified to conform with the provisions of SB 1818 to provide a base density bonus of 5% to those for sale projects setting aside 10% of its units for moderate-income families when the proposed local ordinances become law.

4. Los Angeles Municipal Code 12.22.A (d) (2): Proposed 'transit incentive' rewards developer with a 40% greater amount of units above the current zoning than the same project not located in a "transit corridor" while producing the same number of affordable units.

Whereas:

- The "transit incentive" is available to any project within 1500' (over ¼ mile) of:
 - An existing or major bus center, bus stop along a major bus route or fully funded mass transit station or
 - An intersection of transit priority arterials (undefined by code) or
 - Boundaries of a regional center (undefined by code) or
 - Major economic activity areas (undefined by code) or
 - College or University with an enrollment exceeding 10,000 students
- "Major Bus Route" is one "...with peak-hour headways of 15 minutes or less,"
- Based on the fact that any area with a "major bus route" every ½ mile in just one direction (north-south or east-west) will be a "transit corridor" in its entirety, vast portions of our city fall within this category based on just *one* of many qualifying factors, most of them vague and overbroad,
- Building a density bonus project within ¼ mile of mass transit does not justify rewarding the developer with more market rate units without requiring more affordable units:

Resolved that Los Angeles Municipal Code 12.22.A (d) (2) and the reward of additional market rate units to developers building within 1500' of a "transit corridor/major employment center" must be eliminated from our local ordinances.

5. Los Angeles Municipal Code 12.22.A 25: Does not provide any realistic chance for the neighbor of a density bonus project to effectively protest because of the limited right to notice and appeal, and the lack of public access to relevant information.

Resolved that the proposed code be amended to (1) provide notice and right to appeal regarding all proposed density bonus projects to all owners and occupants within 500' and the Certified Neighborhood Council. Additionally, (2) notice of hearing must be mailed 30 days prior to that hearing and (3) the right to appeal must be for 30 days from date of mailing. Finally, (4) the appropriate environmental report, specifically including an analysis of whether the project will have a "specific adverse impact" within the meaning of SB 1818, must be completed and made available to the public as of the date that notice is mailed. These four items must be incorporated when the local ordinances become law.

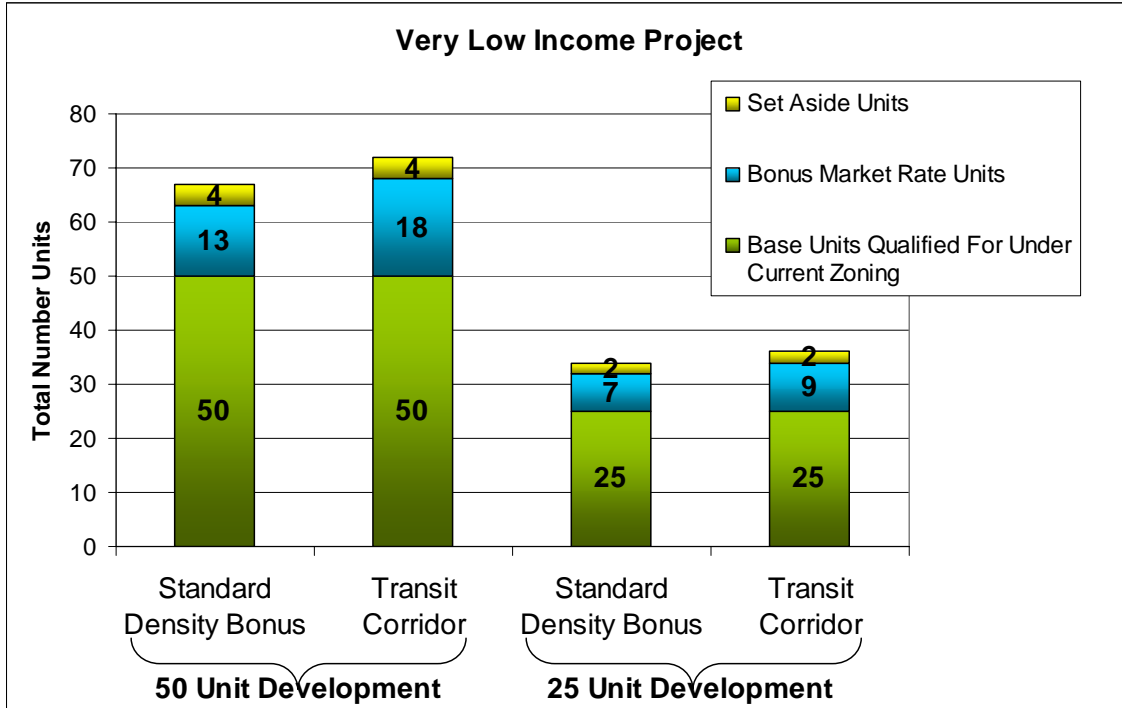
6. The proposed local ordinances implementing SB 1818 contain absolutely no provisions to protect adjacent single-family occupants.

Resolved (1) that the waiver of setback incentive become unavailable for any lot line shared with an R-1 property, (2) that no balconies be allowed on the side of a project facing an R-1 lot, and (3) that the developer must install and maintain mature trees on any lot line shared with an R-1 lot in a manner that provides an affective visual screen whenever the density bonus project is 2 stories or greater. These trees must be at least 75% of the height of the structure. The last provision shall be inserted into a covenant that will run with the building in perpetuity. These additions to the local ordinances must be incorporated when the local ordinances become law.

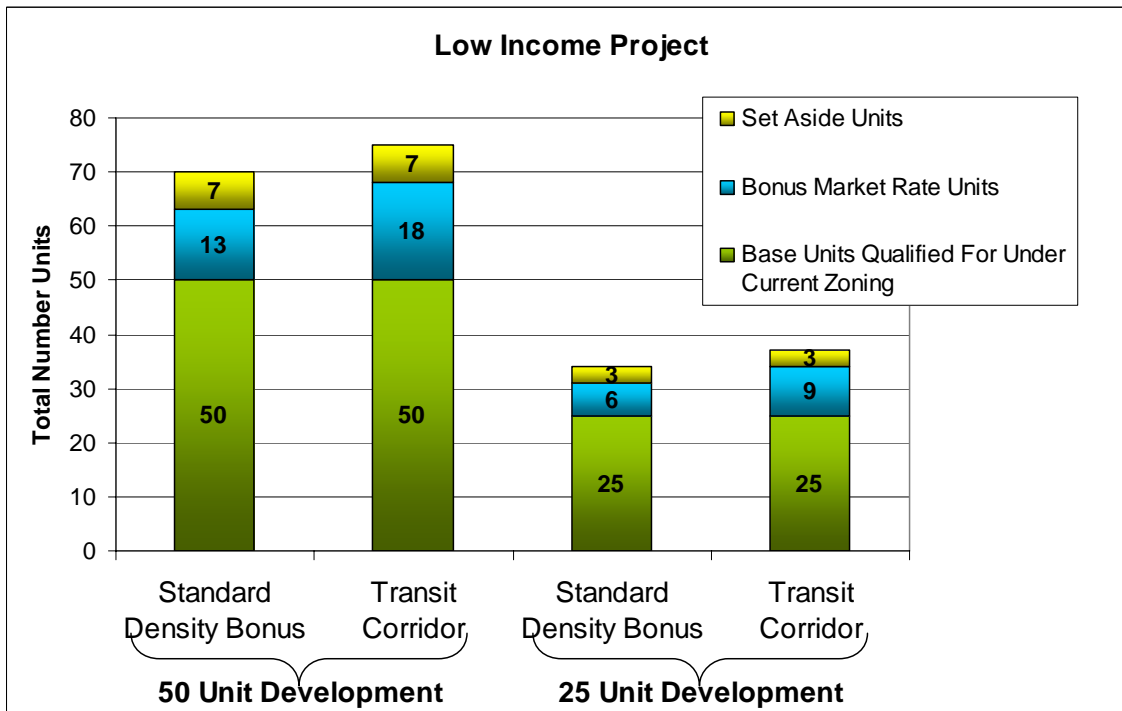
IV. APPENDIX

A. Graphs Demonstrating That Proximity to Mass Transit Creates Higher Profits for Developer, Not More Affordable Housing Units

1. Very Low-Income Density Bonus Project: Non-Transit Corridor vs. Transit Corridor

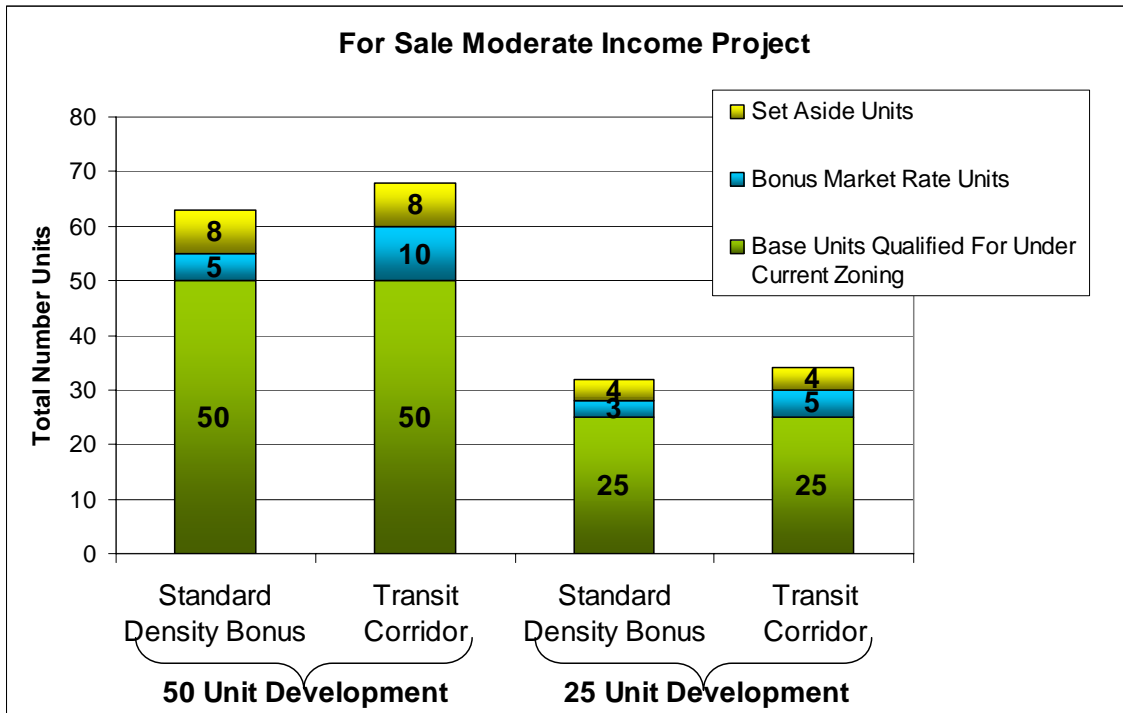


2. Low-Income Density Bonus Project: Non-Transit Corridor vs. Transit Corridor



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3. Moderate-Income Density Bonus Project: Non-Transit Corridor vs. Transit Corridor



B. Graph Illustrating Rising Profit Margins For Developers on For Sale Moderate-income Project as Proposed by the City

