



**City of South Pasadena
Planning and Community
Development Department**

Memo

Date: March 9, 2021

To: Chair and Members of the Planning Commission

From: Joanna Hankamer, Planning & Community Development Director

Re: Additional Document No. 1, General Comments

The attached written and audio general public comments were submitted by Josh Albrektson. Verbal comment can be heard by clicking on this [link](#).

Elizabeth Bar-EI

From: Josh Albrektson <joshraymd@gmail.com>
Sent: Monday, March 8, 2021 8:00 AM
To: PlanningComments
Cc: hello@yimbylaw.org; Compliance Review@HCD; McDougall, Paul@HCD; Diana Mahmud
Subject: General Public Comment for 3/9 planning commission

CAUTION: This email originated from outside of the City of South Pasadena. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I wanted to go over some of the illegal things Planning has presented to you guys in part because they are asking you guys to make policy based on ignoring the laws. I have CCed HCD so they have it when they review these ordinances.

Claiming 1,000 ADUS on Housing Element

Do you remember when they stated that 1,000 ADUs was totally allowed and legal and I said it wasn't?? Ask them what it is now. It is about 160. Here is the HCD memo on the Housing Element where you can read on page 31 what is allowed.

https://www.hcd.ca.gov/community-development/housing-element/docs/Sites_inventory_memo_final06102020.pdf

Objective design standards versus subjective design guidelines for ADUs

At the first ADU meeting Liz Bar-EI described "Objective design standards" as standards that required an essay of how a ADU fits in with a historic neighborhood.

<https://youtu.be/3kgBqavx1qE?t=2388>

At the last Planning commission meeting City Attorney Theresa Highsmith had a very interesting legal theory about design standards which are subjective versus design guidelines which are objective. You can legally ONLY apply objective standards to housing projects. Teresa says that if the OBJECTIVE design standards references the SUBJECTIVE design guidelines, then the SUBJECTIVE design guidelines are now legally enforceable.

If an OBJECTIVE standard requires a SUBJECTIVE guidelines, then it is no longer OBJECTIVE standards. There is a reason that the city has had 16 lawsuits against it recently, and it starts with the city attorney.

<https://youtu.be/qHX6GB9lkl?t=6967>

It is illegal to backdate an ordinance or apply it to projects that has completed pre-application checklist on the IHO

At the last planning meeting I pointed out that applying the IHO retroactively specifically outlawed by SB 330. I was hoping that they would present the second part of SB 330 today so that Teresa Highsmith would cover this section of SB 330. Like I said, I was pretty surprised that planning didn't know about it and our city attorney didn't review the ordinance or didn't know that aspect of SB 330, because it was one of the main parts of it.

In the current agenda it states that backdating "may not be enforceable as to a preliminary application received pursuant to SB330." The other term for that is being illegal.

The city attorney also needs to review what she considers her definition of "Deemed complete" in your agenda report, because what she says is not what the state defines Deemed Complete to be.

<https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/hcd-memo-on-haa-final-sept2020.pdf>

You cannot use an IHO and Density bonus to count to for RHNA units in the Housing Element. It MUST be the base zoning.

On page 14 of the HCD Housing Element Memo it specifically talks about an Inclusionary program and a density program not being allowed to count for the RHNA. It must be the BASE zoning that is counted for RHNA. Here is the paragraph:

"The analysis of "appropriate zoning" **should not** include residential buildout projections resulting from the **implementation** of a jurisdiction's **inclusionary program or potential increase in density due to a density bonus**, because these tools are not a substitute for addressing whether the underlining (base) zoning densities are appropriate to accommodate the RHNA for lower income households. Additionally, inclusionary housing ordinances applied to rental housing must include options for the developer to meet the inclusionary requirements other than exclusively requiring building affordable units on site."

https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf

Here are two links to Planning describing exactly that:

Liz's statement from 37 minutes to 40 minutes here where she talks about consulting with Placeworks. I'm going to directly quote one part at 38:15

<https://youtu.be/TuZRTdnKojA?t=2221>

"Could the RHNA suitable cites.... Be used to satisfy HCD... What we found is using this 135% using the IHO 20% requirement and taking advantage of the density bonus the numbers come out with a little bit of a cushion"

And here is Planning Director Joanna talking about how the IHO and Density Bonus can be used to help with RHNA numbers from 2:22:00 on

<https://youtu.be/TuZRTdnKojA?t=8526>

I'll quote one part at 2:23:30:

“And we are trying to craft an inclusionary policy in coordination with the state density bonus that would legitimize our proposal to meet the RHNA”

This is the exact paragraph from the 3/9 Agenda Report stating the thing that is specifically outlawed:

“The inclusionary housing ordinance is an important policy tool to achieve the goal of providing affordable housing for the community along with above moderate (market rate) housing. Policies that enable both are essential to demonstrate capacity to build the 2,062 units (including 1,484 affordable units) required for the Housing Element’s Regional Housing Needs Assessment (RHNA).”

<https://www.southpasadenaca.gov/home/showpublisheddocument?id=25425>

This is why Planning is presenting you with an IHO that has affordability numbers higher than San Francisco, the most expensive place to build in the state. It is also why they don't show you the other cities IHOs, because what they are presenting is vastly higher than any local implemented IHO.

The IHO will cause a significant drop in Realistic Development Capacity

This is the bottom of page 20 of the HCD memo on the Housing Element. As I stated before, planning is following none of the rules set out in the memo, but I do want to point this one out specifically.

“Realistic development capacity for nonresidential, nonvacant, or overlay zoned sites The capacity calculation must be adjusted to reflect the realistic potential for residential development capacity on the sites in the inventory. “

“Local or regional track records, past production trends, or net unit increases/yields for redeveloping sites or site intensification. This estimate may be based on the rate at which similar parcels were developed during the previous planning period, with **adjustments** as appropriate to reflect new market conditions or **changes in the regulatory environment**. If no information about the rate of development of similar parcels is available, report the proportion of parcels in the previous housing element’s site inventory that were developed during the previous planning period. For example, if past production trends indicate that two out of three similar sites were developed for residential use, and one out of three similar sites was developed for commercial use, an initial estimate of the proportion of new development which is expected to be residential would be two-thirds, i.e., 0.67.”

Planning is not following any of the rules relating to the Housing Element, but I want to point out what this IHO will require of South Pasadena to do. Because the IHO causes a significant impediment to building housing, the realistic development capacity will go down and South Pasadena will have to zone for a lot more housing to meet their RHNA. If you implement an IHO that has the levels of San Francisco, the laws require the Housing Element to provide enough zoning that South Pasadena can produce the 2,062 units. In other words South Pasadena will be required to zone like San Francisco zones.

This will be reviewed when South Pasadena turned in their housing element

Here is the response I received from HCD when I asked them about South Pasadena being required to

produce an economic report for this IHO (which will be required in 2026 if anything above 15% is implemented)

“It looks like they have exceeded their housing need for above moderate which means that 1505 does not apply to South Pasadena. However, we will be reviewing their housing element of the general plan and will look at this provision and whether it constraints the cost and supply of housing under that statute. “

AB 1505

Here is the HCD memo for Rental Inclusionary Housing. It is 7 pages long and you guys should read it.

https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab_1505_final.pdf

Conclusion

South Pasadena will not produce a compliant Housing Element. This is because of a choice by planning to not follow the guidelines put out by HCD. There are other ways than what is listed above where they are completely violating/ignoring the law and will be rejected by HCD, just like HCD has been rejecting other cities claims.

Placeworks has been non-existent. I believe that is because they have given South Pasadena tons of advice that violates/ignores the law. They have seen what I have seen, HCD rejecting these BS claims, and want to be sure they are not on the record for anything more when South Pasadena's Housing Element goes down in flames.

You guys should ask Placeworks to give a Housing Element update presentation including what is happening in other jurisdictions so they are on the record.