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**PLANNING DIVISION**  
**DIRECTOR'S POLICY STATEMENT**

**DATE:** April XX, 2024  
**SUBJECT:** Additional Height Allowance through the State Density Bonus Program

**South Pasadena Municipal Code Section:**

36.300.040 Height Limits and Exceptions

36.370.050 Waivers

**Policy Statement**

A project that invokes the concessions/incentives (hereafter collectively referred to as concessions) and/or waivers available through State Density Bonus Law can exceed the 45-foot building height limit. The City has an adopted Housing Element and General Plan that supports the production of affordable housing units. To accommodate housing production contemplated in the General Plan and Housing Element, the City of South Pasadena shall not consider building height beyond 45 feet to be a specific, adverse impact, as described in Government Code Section 65589.5(d) and (e). Further, if the 45 foot height limit would physically preclude the construction of a density bonus project at the densities or with the concessions permitted under Density Bonus Law, the height limit 45 foot height limit will not be applied to that the project. The City supports affordable housing projects, including those projects that exceed 45-feet in height and that qualify for the available Density Bonus concessions and/or waivers. This will be the City's position until and unless the 45-foot height limit is repealed or revised by the electorate, or there is a relevant change in State Density Bonus Law.

**Analysis**

On July 12, 1983, South Pasadena voters approved a ballot initiative that included the following language:

*No Commercial, Office, Manufacturing, or Residential building shall be built to a height in excess of forty-five (45) feet and that no variance or condition use permit shall be granted to exceed this limit. Furthermore, that no parking variance shall be granted to exceed five per cent (5%) of the required spaces.*

The ballot initiative language was formally codified through Resolution No. 5642 on July 19, 1983. Since that time, the 45-foot height limit has been the City's standard for maximum building height.

General law cities, such as the City of South Pasadena, are subject to applicable California State Laws, including regulations that govern the development of affordable housing, which have preempted local land use regulations to a large degree for both general law and charter cities. State Density Bonus Law (Govt. Code Section 65915) is one example where State law preempts local law by providing an avenue to render certain local regulations, including height and density and other development standards in applicable to housing projects meeting certain criteria. South Pasadena Municipal Code (SPMC) Chapter 36.370 Affordable Housing Incentives addresses Density Bonus Law generally, and other

sections of the SPMC, including Chapter 36.370.050 (Waivers), refer to Government Code Section 65915. Specifically, Government Code Section 65915(o)(2) defines the term “development standard” and states:

*“Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation that is adopted by the local government or that is enacted by the local government’s electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local government. (emphasis added)*

Pursuant to Density Bonus Law, any affordable housing applicant is entitled to request a concession and/or waiver for a qualifying density bonus project. This includes requests for deviations or waivers from standards for height, including regulations that were adopted by the electorate through the initiative process. Therefore, a project proposed with an affordable housing component that meets the density bonus eligibility requirements, may be eligible for heights greater than 45 feet despite the 1983 ballot initiative and Resolution No. 5642. The City, in implementing State Density Bonus Law, has approved affordable housing developments that exceed the 45-foot height limit, using available Density Bonus concessions and wavers.

#### **Policy Clarification and Relationship to Director’s Interpretation Procedures**

“The Director shall have the responsibility and authority to interpret the meaning and applicability of all the provisions and requirements of [South Pasadena’s] Zoning Code” (SPMC §36.110.020). In instances where a conflict exists between provisions of the zoning code, a Director’s Policy may be issued, following the procedures set forth in SPMC §36.110.040, including distribution to the City Council, Planning Commission, Design Review Board, Cultural Heritage Commission, City Manager, City Attorney, City Clerk, and affected Department Staff. A Director’s Interpretation is appealable to the Planning Commission (SPMC 36.610.040(A)).

In this instance, there is no internal conflict within the South Pasadena Municipal Code. Therefore, a Director’s Interpretation is not warranted. Government Code Section 65915(o)(2) clearly states that building height is one of the development standards that is subject to a potential concession or waiver under the Density Bonus regulations. As SPMC Chapter 36.370 (Affordable Housing Incentives) includes references to the State Density Bonus code section, the City’s Zoning Code is internally consistent and is likewise consistent with state law. This Policy Statement is similar to a Director’s Interpretation, but as it affirms the existing Zoning Code, the policy is not a formal Director’s Interpretation, and is not appealable to the Planning Commission.

#### **Consistency with the General Plan**

This Policy Statement is consistent with the following General Plan policies and Housing Element Goals Programs:

##### General Plan Policies

P3.6 Increase the number of affordable units to stabilize rents and prices.

P3.7 Provide high quality housing for current and future residents with a diverse range of income levels.

P5.8 Support the reduction of governmental and regulatory constraints, and advocate for the production of affordable housing.

Housing Element

Goal 2.0: Encourage and Assist in the Provision of Affordable Housing

Program 2.b Affordable Housing Production

Program 2.e Facilitate Density Bonus for Projects with On-site Affordable Housing

The concessions and waivers available through Density Bonus regulations are consistent with the applicable General Plan and Housing Elements goals, policies, and programs that support the production of affordable housing.

**Distribution**

This Policy Statement will be posted on the Planning Division website.

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Angelica Frausto-Lupo, Community Development Director

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Date