

April 8, 2003

**Honorable Chairman and Members of the
Hermosa Beach Planning Commission**

**Regular Meeting of
April 15, 2003**

SUBJECT: 2002 AND 2003 STATE HOUSING BILLS

Recommendation

Receive and file.

Background

Staff is providing information on these housing bills because of their potential impact on future decisions of the Planning Commission.

Assembly Bill 2292 (Dutra) - No Residential Density Loss

This bill was approved in 2002 and signed into law as an added Section 65863 to the State Planning and Zoning Law.

This new law states that cities cannot reduce, require, or permit the reduction of residential density on any parcel below the density “that was approved by the Department of Housing and Community Development (HCD) in determining compliance with housing element law”, unless a finding can be made, supported by substantial evidence, that another parcel or property is allowed to increase density to make up the difference. The law also requires a court to award attorney’s fees and costs of a suit if it finds that a city’s action is in violation of these provisions.

The new law was supported by the building industry and housing advocacy groups to deal with “NIMBY-ism” (Not In My Back Yard advocates that oppose development) that is seen as interfering with the development of housing sites to their allowed density. The new law, however, was opposed by such groups as the League of California Cities and the American Planning Association because housing elements do not clearly specify residential densities for all parcels, nor does housing element law require HCD to specify the density, and the bill does not indicate how to deal with this issue.

Given the lack of a specified density in Housing Elements, it will be difficult for a city to know whether or not they are violating this law. The current legal advice is for cities is to proceed with caution and not down-zone residential property (i.e. reduce the allowed density under the Zoning Ordinance), or approve a request from a developer to down-zone property.

Assembly Bill 1866 (Wright) - Second Units and Density Bonus Law

This bill was approved in 2002 and signed into law amending Section 65852.2 of the State Planning and Zoning Law regarding local government review of “second units.” The term second unit refers to the addition of a second unit on a single-family or multi-family lot in addition to the primary units allowed by the zoning code. These types of units are commonly referred to as “in-law quarters” or “granny flats.”

The new law requires local governments to approve second unit requests ministerially without discretionary review or hearing. The bill does not change other existing provisions of the second unit law, which allows local agencies to preclude second units (if certain findings are made) or determine areas where second units will be allowed. In 1992 the City of Hermosa Beach adopted an ordinance to preclude second units pursuant to Section 65852.2 (c) of the Government Code, so this new law would not seem to be relevant. However, the City still retains a provision allowing age restricted second units on lots greater than 8,000 square feet with a C.U.P. This new law would require the City to remove the C.U.P. requirement and approve such a request administratively.

2002 Senate Bill 910(Dunn) - Housing Element Reform

This controversial bill died in Assembly Committees in 2002, but the same issues have re-surfaced this year with Senator Dunn's introduction of a new bill SB744. As proposed in 2002, the most controversial part of the bill would have imposed financial penalties for cities without an HCD approved housing element. The bill also contained important reforms to the Regional Housing Needs Assessment (RHNA) process of housing element law, and other reforms to the housing element law.

The 2003 version of this bill still seeks to put more "teeth" in housing element law, but instead of penalizing non-compliant cities would give priority in obtaining State infrastructure funds to cities with compliant housing elements. Housing advocacy groups and the building industry, generally support the concept behind the bill. Cities and counties are opposed, especially if it includes penalties of any form, and will again be lobbying the legislature to include much needed reform to both the RHNA process and the Housing Element review and approval process if it considers such a bill, as well as considering more direct and effective methods for solving the State's housing crisis that do not burden local governments.

The new adopted laws and any new bills may require Hermosa Beach to amend the Zoning Ordinance or other sections of the Municipal Code. Staff will consult with the City Attorney to make the appropriate changes, if any, prior to consideration by the Planning Commission.

CONCUR:

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