Legislation Text

File #: 22-0380, **Version:** 1

TO:
Honorable Mayor and Members of the City Council

THROUGH:
Bruce Moe, City Manager

FROM:
Carrie Tai, AICP, Community Development Director
Talyn Mirzakhanian, Planning Manager
Ted Faturos, Associate Planner

SUBJECT:
Continued General Business Item to Consider Five Appeals of the Planning Commission's Decision to Affirm the Community Development Director's Approval of a Precise Development Plan, Coastal Development Permit, and Tentative Parcel Map for the Development of a 96,217 Square-Foot Multi-Family Residential Building Ranging 37 to 50 Feet in Height and Including 79 Rental Dwelling Units with the Developer Utilizing a Density Bonus Pursuant to State Law, Inclusive of Waivers and Concessions, at 401 Rosecrans Avenue and 3770 Highland Avenue (Continued from the August 16, 2022, City Council Meeting) (Community Development Director Tai).
(Estimated Time: 2 Hrs.)

A) RESUME GENERAL BUSINESS ITEM
B) AFFIRM THE DECISION OF THE PLANNING COMMISSION

RECOMMENDATION:
Staff recommends that the City Council affirm the decision of the Planning Commission.

BACKGROUND:
On August 16, 2022, the City Council considered five appeals of the Planning Commission's decision to affirm the Community Development Director's approval of a Precise Development Plan and associated entitlements (Coastal Development Permit and Tentative Parcel Map) for a 96,217 square -foot, four-story multi-family residential project ("Project") containing 79 rental dwelling units, six of which will be set aside for "very low income" households. City staff, the applicant, and four appellants made presentations.

After the presentations, staff and the applicant answered questions posed by the City Council (see attachment for synopsis of Council's questions and staff's responses). Over 50 individuals provided public comment on the item. Speakers opposed to the Project expressed concerns related to parking, traffic, building height, and environmental hazards due to the site's proximity to the Chevron Refinery. Speakers in favor of the project focused on the need for housing stock and cited the potential consequences that the City could face if the project were disapproved. Consequences of disapproval noted by speakers include:

- Legal Suits and Attorney Fees: Affordable housing advocacy groups and/or the property owner could file lawsuits that disapproval is inconsistent with the City's Housing Element and Local Coastal Program and does not comply with State law. In other lawsuits involving housing, the courts have awarded attorney's fees and costs to the plaintiffs, which the cities must pay. Furthermore, a court could overturn the denial of the project and direct the City to issue the requested entitlements.

- State Action: The California Department of Housing and Community Development (HCD) and/or the State Attorney General's Office might intervene in the City's local land use process. Recently, the Attorney General's Office has taken a very active role in opposing disapprovals of housing development projects, especially projects that propose to reserve some or all of its units for low-income households. As indicated by the influx of recent housing legislation and the establishment of HCD's Housing Accountability Unit and the Attorney General's Housing Strike Force, the State is paying close attention to all housing matters.

  The Housing Accountability Act ("HAA") limits a city's ability to deny or condition housing projects that contain 20 percent lower income or 100 percent moderate/middle income under subdivision (d) of Government Code Section 65589.5, especially if the city does not have a substantially compliant housing element. Some have argued that a portion of the HAA – commonly known as the "Builder's Remedy" – allows proponents of affordable housing projects to essentially bypass the zoning code and general plan of cities that fail to substantially comply with the Housing Element Law if certain conditions are met. Proponents of the project have cited this "Builder's Remedy" as a means of bypassing Manhattan Beach's zoning code and General Plan to build an even larger housing development on the site if the proposed project is denied.

- Replacement Projects: If disapproved, alternative projects could include:

  1. A residential project proposing a 50% density bonus including up to 87 units and taller buildings; or
  2. A commercial project generating more traffic and parking demand.

Citing the late hour, the City Council continued the item to September 6, 2022.

As a courtesy, on August 18, 2022 and September 1, 2022, City staff sent an email to all interested parties, including the applicant and all appellants, notifying them that the City Council continued the item to the September 6, 2022 City Council meeting.

DISCUSSION:
Subsequent to the publication of the August 16, 2022 agenda report, staff received late written public comments, including but not limited to written materials from some of the appellants. These documents are attached and hereby incorporated by reference. Also included in the attachments is a series of staff responses to questions/concerns stemming from these late public comments. Note that the aforementioned late public comment materials submitted by the appellants do not serve as an "addendum" to their respective appeals, as the correspondence was not submitted with the respective appellants' original appeal documents during the official appeal period. Nevertheless, staff has provided responses in the attachments; thus the City's responses are incorporated herein.

During the August 16, 2022 meeting, a councilmember inquired about the potential use of project units as short-term rentals ("STRs"). The State Legislature has recognized that STRs remove residential housing stock from the market. In response, the Legislature has given local governments tools, and imposed mandates, to facilitate the creation and maintenance of long-term housing stock. For example, the Housing Crisis Act of 2019 provides that local governments may adopt policies that prohibit the "commercial use of land that is designated for residential use, including, but not limited to, short-term occupancy of a residence, consistent with the authority conferred on the county or city by other law." The City has such a policy, and the City Council has the authority conferred by state law to specifically prohibit STRs in Density Bonus housing projects.

In further recognition that short term rentals are an anathema to housing stock, Senate Bill 9 provides – with respect to both multi-unit housing development projects and urban lot splits – that "[a] local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days." Accordingly, the California Legislature has expressly prohibited short term rentals in its most recent effort to address California's housing crisis. The City can build upon these State-level restrictions by incorporating a provision into the project's affordable housing agreement that expressly prohibits STRs within the entire project, such as the following:

> No dwelling unit or a room in a dwelling unit shall be offered or made available for rent or to rent (by way of a rental agreement, lease, license or any other means, whether oral or written) for compensation or consideration for less than thirty (30) consecutive days.

CONCLUSION:
The purview of the City Council in its evaluation of this Project is limited to confirming compliance with all objective, applicable State and local regulations. Accordingly, and based on the evidence introduced in the record, staff recommends that the City Council affirm the Planning Commission's decision.

LEGAL REVIEW:
The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:
1. Draft Resolution No. 22-0124
2. Staff Report with Attachments (August 16, 2022) (Web-Link Provided)
3. Public Comments Received for the August 16, 2022 City Council Meeting
4. Synopsis of Staff and Applicant Responses to City Council Questions
5. City Responses to Additional Public Comments
6. Public Comments Received from August 17, 2022 - August 31, 2022