

Draft July 22, 2002 (includes response to Nicoloff affordable housing project comments and Maio proposed revisions)

BUILDING HEIGHT LIMITS

CITY ATTORNEY'S ANALYSIS

The proposed ordinance affects building heights limits under the Berkeley Zoning Ordinance in several respects. The initiative would reduce height limits in several commercial districts, including the downtown, as well as ~~in higher density residential and mixed-use residential districts. Examples of the affected streets are along major streets such as San Pablo, Telegraph, University and Shattuck Avenues.~~ The initiative is likely to make developments containing ground floor retail with housing above (known as "mixed-use") less feasible. Most recent new rental housing development in Berkeley has been part of such mixed-use projects.

The initiative would not change current height limits in lower density residential districts, but would change the procedure for approval of height increases. It the initiative would require that public hearings before the Zoning Adjustments Board for the approval of all any-increases in building height over 28 feet, be approved by the Zoning Adjustments Board, after a public hearing. Under current law, such approvals are made by the Zoning Officer, and are subject to appeal to the Zoning Board and then to the City Council. Over the last two year period, the Zoning Officer considered eight requests for height increases.

The initiative would prohibit approval of any variances from the height limits specified in the Zoning Ordinance. Under current law, variances are granted on occasion only upon strict findings. The initiative would also prohibit granting height increases in a given location in exchange for reduced development at another location. This rarely, if ever, occurs under the City's current practices.

~~Where the City is required by sState law requires the to granting of development incentives and/or concessions to developers who include a certain percentage of of an affordable housing project (as defined by sState law) in their projects. ,†The initiative would require the City to grant height increases only after all other incentives or concessions such as reduced parking, setbacks-and- open space, or increased lot coverage, fee waivers or direct financial assistance, to the extent financially feasible, have been exhausted. The initiative would cap also limit such height increases to a maximum of ten feet.~~

Because it is difficult to achieve the required level of state incentives without a height increase, the initiative will make it more difficult for the City to meet the requirements of state law concerning affordable housing and may require the City to grant developers, ~~of who provide the required percentage of affordable housing, additional financial subsidies in lieu of height increases, over ten feet.~~

~~The granting of incentives other than height could also to make it more difficult to increase setbacks for mixed commercial and housing developments to require the~~

elimination of setbacks which buffer smaller adjacent residences and may require waiving open space and parking requirements for such developments. The initiative appears to be inconsistent with provisions of the City's recently adopted General Plan and Housing Element and is likely to require their revision

The initiative could be amended by the City Council ten years after adoption or upon a two-thirds vote and specified-written findings that it is inconsistent with area plan height standards, expressed in feet. No such area plan height standards exist.

Financial implications

Possible but uncertain increases in administrative costs to conduct hearings before the Zoning Adjustment Board and revise the General Plan and Housing Element and in additional financial subsidies to developers for affordable housing.