

2022 Housing Legislation and State Density Bonus Law Update

League of California Cities
City Attorneys Spring Conference

May 17, 2023

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Summary of State Density Bonus Law

Applies to a housing project of at least 5 units.

Requires local agencies to grant an increase in density when applicant provides a specified percentage of units that are affordable to at least any one of the following:

- a) Very-low income households or low-income households,
- b) A senior citizen housing development or age-restricted mobile home park,
- c) Moderate-income households in a common interest development (CID) provided the units are available for public purchase,

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Summary of State Density Bonus Law (cont'd)

- d) Transitional foster youth, disabled veterans, or homeless persons, or
- e) Lower income students in a student housing development.

Government Code section 65915 (b) (1).

In exchange for the provision of affordable units, the developer is entitled to an increase in the allowable density within the project.

Density Bonus Amounts

Applicants for a density bonus are entitled to the following **maximum** density bonus depending upon the level of affordability provided by the developer:

- (a) 50% bonus for 15% of the units set aside for very-low-income households;
- (b) 50% bonus for 24% of the units set aside for low-income households; and
- (c) 50% bonus for 44% of the units set aside for moderate income households but which such units must be for sale only.

Density Bonus Amounts (cont'd)

In addition to these maximum density bonuses, the statute permits a range of between 5% and 50% density bonus depending upon the level/depth of affordability and the number of those affordable units.

Applicant is not required to utilize any, or all, of the bonus units.

Concessions and Incentives

Concessions include:

- 1) A reduction in site development standards or modification to zoning standards or design requirements.
- 2) Approval of non-residential uses (retail, office commercial, industrial or other land uses) along with the housing project if it will reduce cost of housing project.
- 3) Other "regulatory incentives or concessions proposed by developer."

Concessions and Incentives (cont'd)

Concessions and incentives must allow an **identifiable and actual cost reduction** to provide affordable housing costs and cannot result in a specific adverse impact on a written, objective health or safety standard.

Intention is to facilitate the construction of the density bonus or “extra” units.

Number of concessions is related to the percentage and depth of affordability (maximum of 4).

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Examples of Concessions/Incentives

Examples:

- a) site/construction condition
- b) parking
- c) timing of payment of development fees*
- d) architectural design requirements
- e) open space requirements

*An agency is NOT required to waive development fees or dedication requirements.

Government Code section 65915 (I).

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Lack of Local Agency's Discretion

Agency has the burden of proof when denying a concession/incentive.

Local agency may deny requested concession/incentive but the denial must be based upon substantial evidence and include findings that the requested concession/incentive will:

- 1) Not result in identifiable and actual cost savings to the project to provide for the affordable housing costs; or

Lack of Local Agency's Discretion (cont'd)

- 2) Have a specific adverse impact on public health, safety or on property which is listed on the state Register of Historical Resources and there is no feasible method to satisfactorily mitigate the impact without making the project unaffordable to low-income and moderate-income households; or

- 3) Would be contrary to state or federal law.

Government Code section 65915 (d) (1).

Waivers/Modifications of Development Standards

An agency is precluded from applying development standards that would have effect of “physically precluding” construction of the project *at the density proposed and with the concessions and incentives requested.*

Unlimited number of waivers allowed.

Examples include:

- a) height limits
- b) open space requirements
- c) setbacks

Waivers/Modifications of Development Standards (cont'd)

Same standard for denial of requested waivers/modifications.

Granting of a density bonus, concession or waiver does not trigger a requirement to amend the general plan, or zoning, or any other discretionary approval.

Parking Requirements

Upon the applicant's request, the local government may not require parking standards greater than the following (including parking for disabled persons and guests):

- a) Zero to one bedroom: one onsite parking space per unit.
- b) Two to three bedrooms: one and one-half onsite parking spaces per unit.
- c) Four or more bedrooms: two and one-half parking spaces per unit.

Parking Requirements (cont'd)

Under certain circumstances, local agencies must eliminate parking minimums if:

- a) Located within one-half mile of a "major transit stop" to which there is unobstructed access. "Major transit stop" is separated defined in Public Resources Code section 21155, which generally, requires there be bus or transit service with no greater than a 15-minute headway.
- b) Rental housing for persons who are 62 years of age or older, or a special needs rental housing development for lower income households, with paratransit service or unobstructed access, within one-half mile, to a fixed bus route that operates at least eight times per day.
- c) A supportive housing development of rental units for lower income households.

2022 Legislative Updates to State Density Bonus Law

AB 2334

- Allows a housing development project to achieve increased height and unlimited density if it is located in an urbanized area, with very low vehicle travel in specified counties, so long as 80% of the units are restricted to lower income households and no more than 20% are for moderate-income households.
- Height increases of up to 3 additional stories (33 feet).
- No imposition of maximum controls on density by the local government.

2022 Legislative Updates to State Density Bonus Law (cont'd)

- Adds "a minimum lot area per unit requirement" to the list of items considered a development standard.
- Mandates that greater density prevails if there is an inconsistency in the density between zoning ordinances and general plans (including specific plans).

2022 Legislative Updates

AB 682

- Creates a new "shared housing" category within SDBL by automatically conferring two concessions to shared housing projects.
- Prohibits a local agency from requiring any minimum unit size requirements or minimum bedroom requirements in conflict with the SDBL's provisions with respect to a shared housing building eligible for a density bonus.

2022 Legislative Updates

AB 1551

- Extends previously existing law which expired in 2022 (AB 1934).
- Requires local agency to grant a commercial developer a "development bonus" when a commercial development applicant enters into an agreement for with an affordable housing developer to contribute affordable housing through a joint project or 2 separate projects encompassing affordable housing.

2022 Legislative Updates (cont'd)

- Development Bonus includes:

20% increase in max allowable General Plan intensity.

20% increase in max allowable floor area ratio.

20% increase in max height.

20% reduction in minimum parking requirements.

Density Bonus Case Law

- *Bankers Hill 150 v. City of San Diego*, 74 Cal.App.5th 755, 289 Cal.Rptr. 3d 268 (2022). The granting of a concession or waiver shall not be required or interpreted to require a general plan amendment, zone change, or amendment to development standards.
- *Schreiber v. City of Los Angeles*, 69 Cal.App.5th 549 (2021) holds that density bonus applicants need not prove that incentives such as increased floor area and height will result in actual cost reductions.

Questions?

- A. If a local ordinance requires affordable unit to be integrated with market rate units, can concessions/waivers be used to allow affordable units to be in a separate building or parcel than market rate units?
- B. How is "maximum allowable residential density" defined? Does the project need to provide maximum density required in the General Plan before it can seek concessions/waivers?
- C. What type of documentation is required in denying a concession or waiver? Are findings required to be made and what evidence should be presented?

Questions? (cont'd)

- D) Does the SDBL require deed restrictions on affordable units (for sale or rental)?
- E) Can a local agency's inclusionary housing ordinance requirements be counted toward affordable units to achieve a density bonus?