



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: July 27, 2010

SUBJECT: Workshop to discuss the "Draft" proposed ordinance entitled "Density Bonus Provisions for Residential Units" to establish density bonus standards for affordable residential units

APPLICANT: City of Carson

REQUEST: Review, evaluate and provide comments and recommendations on the "Draft" proposed ordinance

PROPERTY INVOLVED: Citywide

COMMISSION ACTION

☐ Concurred with staff

☐ Did not concur with staff

☐ Other

COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Chairman Faletogo			Graber
		Vice-Chair Saenz			Park
		Brimmer			Schaefer
		Diaz			Verrett
		Gordon			

Item No. 12-A

I. Introduction

The following background and analysis describes a housing element implementation tool (density bonus) to facilitate increased affordable housing opportunities to all economic segments in Carson via the recommended approval by the Planning Commission and the adoption by the City Council of a Density Bonus Ordinance in compliance to State Law.

Density bonus definition:

In land use planning and zoning ordinance regulations a density bonus is an increase in density over the otherwise maximum allowable residential density under the general plan land use designation. The amount of density bonus units an applicant may request can vary. It is determined by the amount of units set aside as “affordable” and the applicable category used (low, very low, moderate or senior).

II. Background

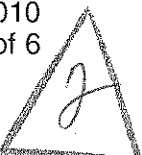
Government Code Section 65915-18, State density bonus law, requires local governments to make incentives available to residential developers that voluntarily propose to reserve specified portions of a proposed development for occupancy by low-or-moderate-income households and indicates that local governments are not to undermine implementation of this provision. Every local government is required to adopt an ordinance establishing how it will implement State density bonus law, including setting forth the incentives the local government will provide.

State housing element law requires jurisdictions to plan for their existing and projected housing needs, identify adequate sites to accommodate their share of the regional housing need, analyze local policies, regulations or requirements that have the potential to constraint the development, maintenance or improvement of housing for all income level. The law also requires programs to “assist in the development of adequate housing to meet the needs of low-and moderate-income households.

The 2006-2014 Regional Housing Needs Assessment (RHNA) prepared by the Southern California Association of Governments (SCAG) allocates a housing need of 1812 units for Carson. The allocation of 1,812 units is broken down into four categories as follows: 461 very low-income households; 287 low-income households; 307 moderate-income households; and 757 above-moderate income households.

Carson is obligated to support and promote the production of new housing for all economic groups in compliance with State Planning and Redevelopment laws.

The proposed Density Bonus Ordinance is modeled after State Law which requires local jurisdictions to adopt ordinances that are consistent with the provisions of California Government Code Sections 65915-65918. In January 2005, the State enacted Senate Bill 1818, which called for substantial changes to the State’s density bonus law. These changes resulted in the need for cities and counties statewide to amend their density bonus ordinances to bring them into conformance with the new requirements. In general, the changes to density bonus law instated in January of 2005 relaxed the



eligibility requirements for projects to receive a density bonus in an effort to encourage more affordable housing.

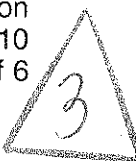
III. Analysis

What SB 1818 Does:

- Creates a range of density bonuses by decreasing the percentage of affordable units needed to obtain a reduced density bonus, and by increasing the maximum density bonus to 35 % percent. Previous law required localities to grant a flat density bonus of 25 % percent for developments with 20 % lower income units, 10 % percent very low, or 50 % percent for seniors and a flat 10 % percent density bonus for condominiums with 20 % percent moderate income units.
- Under SB 1818, instead of having to provide 20 % percent low-income units, 10 % percent very-low or 20 % percent moderate, an applicant can obtain a density bonus by providing 10 % percent low, 5 % percent very low or 10 % percent moderate. The applicant receives a reduced density bonus for this reduced level of targeting: 20 % percent density bonus for the reduced level of low-and very-low income units and 5 % percent density bonus for this level of moderate income units. This permits an applicant to obtain a lower-income density bonus of 20-35 % percent, a very low-income density bonus of 20-35 % percent, and (in a condo/PUC) a moderate income density bonus of 5-35 % percent.

Within the ranges, the density bonus increases as the percentage of affordable units increases.

- Requires localities to offer 1-3 incentives (reductions in parking, setbacks, open space, etc.), rather than one as in previous law, based on the percentage of targeted units; and requires any incentive to “result in identifiable financially sufficient and actual cost reductions”. Under previous law the applicant was entitled to the incentives they request and must waive or reduce other standards that make it impossible to build at the established density, unless the locality makes specific findings.
- Applies the moderate income density bonus to PUD’s (planned unit developments) not just condo developments as in previous law; requires the first occupant to be moderate income rather than requiring a 10-year term of affordability and requires equity sharing on resale.
- Gives a flat 20 % percent density bonus for all senior housing rather than a 25 % percent bonus for housing with 50 % percent seniors as under previous law.
- Creates a land donation density bonus for applicants who donate land for very low-income housing to a local government or a developer approved by the locality if the land meets requirements related to by-right zoning, location, size, etc.
- Limits parking standards that localities can impose on density bonus developments, reflecting the changes made in AB 2348 (Mullin) which include: 0-1 bedroom=one onsite; 2-3 bedrooms=two onsite; 4 and more bedrooms= 2.5 parking spaces. Parking can be tandem or uncovered, but not in the street.

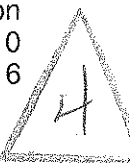


Density Bonus Allowances:

Consistent with State Law, for a housing project that contains at least five units an applicant is eligible for a density bonus based on the categories of the table listed below in Table 1. No density bonus, either individual or combined for any single project shall exceed 35 percent.

Table 1: Density Bonus Allowances

<u>Density-Bonus Category</u>	<u>Minimum-Affordability Required</u>	<u>Density-Bonus Permitted</u>	<u>Increase in Density Bonus Permitted</u>
<i>Lower Income</i>	At least 10 % of the units of a housing development are restricted for lower income housing	20 to 35 percent	An additional 1.5 % density bonus increase for each additional 1 % increase in low income units above the initial 10 % threshold
<i>Very Low Income</i>	At least 5 % of the total units of a housing development are restricted for very low income households	20 to 35 percent	An additional 2.5 % density bonus increase for each additional 1 % increase in very low income units above the initial 5 % threshold
<i>Moderate Income</i>	At least 10 % of the total dwelling units in a common interest development are restricted for person/families of moderate income	5 to 35 percent	An additional 1 % density bonus increase for each additional 1 % increase in moderate income units above the initial 10 % threshold
<i>Senior</i>	N/A (no affordability requirement)	20 percent	N/A
<i>Land Donation</i>	The developable acreage & zoning of land shall be sufficient to permit construction of units affordable to very low income households in the amount not less than 10 % of the residential units in the proposed development	15 to 35 percent	An additional 1 % density bonus increase for each additional 1 % increase in moderate income units above the 10 % threshold



<i>Child Care</i>	Incorporation of a child care facility as part of a project that is eligible for a density bonus	<p>1) A density bonus in the amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility</p> <p>2) The applicant may request approval of an additional incentive that contributes to the economic feasibility of the construction of the child care facility</p>	N/A
<i>Conversion of Apartments to Condominiums</i>	At least 33 % of the total dwelling units in a common interest development are restricted for persons/families of low or moderate income or 15 % of the total dwelling units in a common interest development are restricted for persons/families of low income	<p>1) A 25 % density bonus, or</p> <p>2) The applicant may request approval of an additional incentive that is equivalent to the value of the density bonus.</p>	N/A

Affordable Housing Policies:

The proposed Density Bonus Ordinance supports the following Carson General Plan goals of implementing affordable housing policies:

- The city shall seek to provide an adequate supply of housing for all economic segments of the city.
- Maintenance and enhancement of neighborhood quality.



IV. Conclusion:

The Carson Municipal Code provides residential density up to 55 dwelling units per acre if the residential units are affordable or for seniors within the Mixed-Use Carson Street zone. Within the Mixed-Use Sepulveda Boulevard zone the density is up to 35 dwelling units per acre if the residential units are affordable or for seniors. For all other residential zones, an eligible affordable or senior project would be eligible for a density bonus consistent with state law.

Furthermore, density bonus provisions have been used by: the Villagio Project approved for 149 units with a density of 35 units per acre and a 24 % percent density bonus (approved prior to MU-CS zone); and the Vista Del Mesa Townhomes located at Carson and Perry Streets with 42 units, with a density of 30 units per acre and a density bonus of 20 % percent. The City Center project a mixed-use development was approved with a dwelling unit density of 55 units per acre the maximum density bonus allowed under the CMC for the Mixed-Use Carson Street zone.

The Boulevards at South Bay development is approved for 1,550 housing units on 42 acres with a density range between 35 to 60 dwelling units per acre. The specific plan process included increased density subject to the provision of affordable housing. The developer is currently in negotiation with the Redevelopment Agency for approximately 5 % percent of the units as affordable housing.

Implementing the proposed Density Bonus Ordinance will ensure that the city's vision for quality and affordable housing opportunities exist for all economic segments of Carson. The application requirements under proposed ordinance Section 9411 and the application review requirements under proposed Section 9412 will further ensure that all State law provisions are complied with.


V. Recommendation

That the Planning Commission review and comment on the proposed ordinance for "Density Bonus Provisions for Residential Units"

VI. Exhibits

1. Draft "Density Bonus Provisions for Residential Units" Ordinance
2. State Density Bonus Law Government Code Section 65915-18
3. Senate Bill 1818
4. Senate Bill 1818 Q & A

Prepared by: 
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Approved by: 
Sheri Repp, Planning Officer



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON AMENDING ARTICLE IX OF THE CARSON MUNICIPAL CODE, BY ADDING A NEW CHAPTER 4, "DENSITY BONUS PROVISIONS FOR RESIDENTIAL UNITS," TO SAID ARTICLE IX, TO ESTABLISH DENSITY BONUS STANDARDS FOR AFFORDABLE RESIDENTIAL UNITS

WHEREAS, Government Code Sections 65915, 65915.5, and 65917 require cities to provide certain incentives, concessions or density bonuses to an applicant constructing housing units, a portion of which are restricted as affordable units or units restricted for senior citizens; and

WHEREAS, said Government Code Sections were amended in 2004 by Senate Bill ("SB") 1818, in 2005 by SB 435 making clarifications to amendments made in 2004 by SB 1818, and in 2008 by SB 2280 making further clarifications in the density bonus law;

WHEREAS, the City Council of the City of Carson has not yet enacted density bonus regulations in the City's Planning and Zoning provisions at Article IX in accordance with State law;

WHEREAS, the City Council would like to amend its density bonus regulations as required by State law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. A new Chapter 4, entitled "Density Bonus Provisions For Residential Units" is hereby added to Article IX of the Carson Municipal Code to read, in its entirety, as follows:

"CHAPTER 4 DENSITY BONUS PROVISIONS FOR RESIDENTIAL UNITS

Section 9400	Purpose.
Section 9401	Definitions.
Section 9402	Density Bonuses for Affordable and Senior Citizen Housing.
Section 9403	Additional Density Bonus for Donations of Land.
Section 9404	Density Bonus & Incentives for Condominium Conversions.
Section 9405	Density Bonus & Incentives for Child Care Facilities.
Section 9406	General Provisions Governing Density Bonus Calculations.



Section 9407	Incentives and Concessions for Affordable Housing.
Section 9408	Waivers & Modifications of Development Standards.
Section 9409	Parking Incentives.
Section 9410	Standards for Density Bonus Housing Developments.
Section 9411	Application Requirements.
Section 9412	Application Review.
Section 9413	Developer Affordable Housing Agreement.

Section 9400 Purpose.

This chapter is being enacted: (1) to provide incentives for the production of housing for very low income, low income, moderate income and senior citizen households; (2) to provide incentives for the creation of rental housing serving lower and moderate income households; (3) to provide incentives for the construction of child care facilities serving very low, lower and moderate income households; and (4) to implement Sections 65915, 65915.5, and 65917 of the California Government Code as required by Section 65915(a). In enacting this chapter, the city also intends to implement the goals, objectives, and policies of the city's general plan housing element to encourage the construction of affordable housing in the city. It is also the city's intent to encourage the development of rental housing to serve an economically diverse community. Accordingly, the city desires to provide a density bonus upon the request of an applicant when the applicant includes affordable or senior citizen restricted units in a project. This chapter implements the laws for density bonuses and other incentive and concessions available to qualified applicants under Government Code Sections 65915 through 65918. In the event these Government Code sections are amended, those amended provisions shall be incorporated into this chapter as if fully set forth herein.

Section 9401 Definitions.

For purposes of this chapter, the following definitions shall apply. Unless specifically defined below, words or phrases shall be interpreted as to give this chapter its most reasonable interpretation.

"AFFORDABLE OWNERSHIP COSTS" means average annual housing costs, including mortgage payments, property taxes, homeowners insurance, and homeowners' association dues, if any, which do not exceed the following:

Very low income households: 50% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

Lower income households: 70% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.



Moderate income households: 110% of area median income, adjusted for assumed household size based on unit size, multiplied by 35%.

"AFFORDABLE RENT" means annual rent, including utilities and all fees for housing services, which does not exceed the following:

Very low income households: 50% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

Lower income households: 60% of area median income, adjusted for assumed household size based on unit size, multiplied by 30%.

"AFFORDABLE UNITS" are dwelling units which are affordable to very low, lower, or moderate income households as defined by this chapter or by any federal or state housing program and are subject to rental, sale, or resale restrictions to maintain affordability.

"APPLICANT" means a developer or applicant for a density bonus who seeks and agrees to construct a qualified housing development on or after the effective date of this chapter pursuant to Section 65915, subdivision (b), of the California Government Code.

"AREA MEDIAN INCOME" means area median income for Los Angeles County as published by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or a successor provision.

"ASSUMED HOUSEHOLD SIZE BASED ON UNIT SIZE" means a household of one person in a studio apartment, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

"CHILD CARE FACILITY" means a child day care facility other than a family day care home including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

"COMMON INTEREST DEVELOPMENT" bears the same meaning as defined in Section 1351 of the California Civil Code.

"DENSITY BONUS" means a density increase over the otherwise allowable zoning maximum residential density on a site as of the date of application by the applicant to the city, granted pursuant to this chapter.

"DENSITY BONUS UNITS" means residential units granted pursuant to this chapter which exceed the otherwise allowable zoning maximum residential density for a housing development.

"DEVELOPMENT STANDARD" means any site or construction condition including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a housing



development pursuant to any ordinance, general plan element, specific plan, or other local condition, law, policy, or regulation. A "site and construction condition" is a development condition or law that provides a specification for the physical development of a site and buildings on the site in a housing development.

"FIRST APPROVAL" means the first of the following approvals to occur with respect to a housing development: specific plan, development agreement, planned development permit, tentative map, minor land division, use permit, design permit, building permit, or any other similar permit or entitlement listed this code.

"HOUSEHOLD INCOME" means the combined adjusted gross household income for all adult persons living in a residential unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor provision.

"VERY LOW INCOME HOUSEHOLD" shall have the same meaning as provided in California Health & Safety Code Section 50105.

"LOWER INCOME HOUSEHOLD" shall have the same meaning as provided in California Health & Safety Code Section 50079.5.

"MODERATE INCOME HOUSEHOLD" shall have the same meaning as provided in California Health & Safety Code Section 50093.

"HOUSING DEVELOPMENT," means one or more groups of projects for residential units in the planned development of the city. "Housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the California Civil Code, approved by the city and consisting of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. For purposes of this chapter, "Housing Development" does not include projects for less than five (5) dwelling units.

"INCENTIVES AND CONCESSIONS" are regulatory concessions as listed in section 9407 of this chapter.

"MARKET-RATE UNIT" means a dwelling unit which is not an affordable unit or an inclusionary unit.

"MAXIMUM RESIDENTIAL DENSITY" means the maximum number of dwelling units permitted by the zoning ordinance and land use element of the general plan or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed



under the land use element of the general plan, the general plan density shall prevail. The maximum allowable density is based on the date an application for a housing development is deemed complete. This definition is used to calculate a density bonus pursuant to this chapter.

“SENIOR CITIZEN HOUSING DEVELOPMENT” means senior citizen housing as defined in Section 51.3 (a housing development developed, substantially rehabilitated, or substantially renovated for senior citizens that has at least 35 dwelling units) and Section 51.12 of the California Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

“SPECIFIC ADVERSE IMPACT” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, written public health or safety standards, policies, or conditions as they existed on the date that the application for the housing development was deemed complete. Mere inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

Section 9402 Density Bonuses for Affordable and Senior Citizen Housing.

A. Very Low and Lower Income Housing and Senior Citizen Housing. Upon written request to the city, an applicant for a housing development is eligible for one density bonus of twenty percent (20%) over the maximum residential density (except in the case of senior citizen housing, as provided below), provided that the applicant agrees to construct the housing development in accordance with one of the following criteria:

1. Five percent (5%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to very low income households; or
2. Ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable rent or ownership costs to lower income households; or
3. A senior citizen housing development. For senior citizen housing developments, the density bonus shall be twenty percent (20%) of the number of senior housing units provided.

B. Moderate Income Housing. Upon written request to the city, an applicant for a housing development is eligible for one density bonus of five percent (5%) over the maximum residential density if the applicant agrees to construct the housing development in accordance with all of the following criteria:

1. At least ten percent (10%) of the total dwelling units, excluding any units permitted by the density bonus, are provided at affordable ownership costs to moderate income households; and



2. The housing development is a common interest project as defined by Section 1351 of the California Civil Code; and
3. All of the dwelling units in the housing development are offered for sale to the public.

C. Higher Density Bonus For Greater Contribution Of Affordable Units. Upon written request to the city, an applicant for a housing development that is eligible for a density bonus based upon the contribution of affordable units, may receive a higher amount of density bonus if the percentage of very low, lower, and moderate income housing units exceeds the base percentage established in subsections (A) or (B) above, as follows:

1. Very low income units - For each one percent (1%) increase above five percent (5%) in affordable units for very low income households, the density bonus shall be increased by two and one-half percent (2.5%) up to a maximum of thirty-five percent (35%), as follows:

<u>Percentage Very Low Income Units</u>	<u>Percentage Density Bonus</u>
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

2. Lower income units - For each one percent (1%) increase above ten percent (10%) in affordable units for lower income households, the density bonus shall be increased by one and one-half percent (1.5%) up to a maximum of thirty-five percent (35%), as follows:

<u>Percentage Low Income Units</u>	<u>Percentage Density Bonus</u>
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35



3. Moderate income ownership units - For each one percent (1%) increase above ten percent (10%) in affordable units offered for sale to moderate income households, the density bonus shall be increased by one percent (1%) up to a maximum of thirty-five percent (35%), as follows:

<u>Percentage Moderate Income Units</u>	<u>Percentage Density Bonus</u>
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

D. Continued Affordability. Affordable units qualifying a housing development for a density bonus shall remain affordable as follows:

- a. Very low income, low income and moderate household units shall remain affordable to the designated income group for a minimum of thirty (30) years, or for a longer period of time if required by any construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program applicable to the dwelling units.
- b. Each household unit shall remain affordable for the period set forth in paragraph a. above unless circumstances require the household to sell and they are unable to find qualified buyers in which event an equity sharing repayment to the City or the Agency Low and Moderate Income Housing Fund shall be required.
- c. Notwithstanding the foregoing, very low-, low-, and moderate-income units in housing developments qualified for a density bonus that are located in or found by the redevelopment agency to benefit a redevelopment project area shall remain at an affordable level for a period of not less than forty-five (45) years for owner-occupied units, and not less than fifty-five (55) years for rental units, in accordance with applicable provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.).
- d. Any contract, deed restriction, or other instrument used to implement the continued affordability pursuant to this section, shall be signed by the applicant and by the city as parties. If the housing development is located in or found by the redevelopment agency to benefit a redevelopment project area, such contract, deed restriction, or other instrument shall be signed by the redevelopment agency as a party or, at the redevelopment agency's election, the contract, deed restriction, or other instrument shall identify the redevelopment agency as an express third-party beneficiary with the right to enforce the terms of such contract, deed restriction, or other instrument.

E. Specification of Basis For Density Bonus. Each applicant who requests a density bonus pursuant to Section 9403(A), shall elect whether the bonus will be awarded on the basis of subsection (A)(1), (A)(2), (A)(3) or subsection (B) of this section. Each housing development is entitled to only one density bonus, which may be selected based on the percentage of either very low income affordable housing units, lower-income affordable housing units or moderate-income affordable housing units, or the development's status as a senior citizen housing development. Density bonuses from more than one of these categories may not be combined.

Section 9403 Additional Density Bonus for Donations of Land.

A. Upon written request, when an applicant for a tentative map, subdivision map, parcel map, or other residential development approval qualified for a density bonus pursuant to Section 9402 also donates land to the city in accordance with this section, the applicant shall be entitled to an additional density bonus. Applicants



donating land to the city shall be eligible for an additional fifteen percent (15%) density bonus at the site of the housing development if the donated land is suitable for the construction of very low income units equaling at least ten percent (10%) of the market-rate units being constructed for the project. The density bonus provided pursuant to this section shall be in addition to any density bonus granted pursuant to Section 9402, up to a maximum combined density bonus of thirty-five percent (35%).

B. To qualify for the additional density bonus described in subsection A of this Section 9403 the donation of land must meet all of the following criteria:

1. The tentative map, subdivision map, parcel map, or other residential development must otherwise be subject to a density bonus pursuant to Section 9402; and
2. The land must be transferred no later than the date of the approval of the final subdivision map, parcel map, or housing development application; and
3. The developable acreage and zoning classification of the land being transferred must be sufficient to permit construction of dwelling units affordable to very low income households in an amount not less than ten percent (10%) of the total number of market rate dwelling units in the proposed development (i.e., the proposed development before the addition of any density bonus); and
4. The donated land is at least one acre in size or is large enough to permit development of at least forty (40) units, has the appropriate general plan land use designation, has the appropriate zoning and development standards for affordable housing and, at the time of project approval is, or at the time of construction will be, served by adequate public facilities and infrastructure; and
5. No later than the date of approval of the final map, parcel map, or other development application for the housing development, the donated land must have all of the applicable permits and approvals (other than building permits) necessary for the development of the very low income housing units on the donated land, except that the city may subject the proposed housing development to subsequent design review to the extent authorized by California Government Code Section 65583.2 subsection (i) if the design is not reviewed by the city prior to the time of transfer; and
6. The donated land is subject to a deed restriction ensuring continued affordability of the very low income units consistent with Section 9402(D), which deed restriction shall be recorded upon the donated property at the time of its transfer; and
7. The land will be transferred to the city, the redevelopment agency of the city, or to a housing developer approved by the city. The city reserves the



right to require the applicant to identify a developer and to require that the land be transferred to that developer; and

8. The land is within the boundary of the proposed housing development or within one-quarter mile of the boundary of the proposed housing development ; and
9. No later than the date of approval of the final map, parcel map, or other development application for the housing development, a proposed source of funding for the construction of the very low income units shall be identified.

C. Additional Density Bonus Based On Greater Suitability Of Land For Very Low Income Housing. For each one percent (1%) increase above the minimum ten percent (10%) in the number of very low income housing units that can be accommodated on the donated land, the maximum density bonus shall be increased by one percent (1%), up to a maximum of thirty-five percent (35%), as follows:

<u>Percentage of Very Low Income Units That Can Be Accommodated on Donated Land</u>	<u>Percentage of Additional Density Bonus</u>
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35



Section 9404 Density Bonus & Incentives for Condominium Conversions.

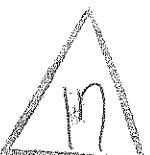
A. An applicant for a conversion of existing rental apartments to condominiums is eligible for either a density bonus or other incentives of equivalent financial value, at the option of the city, if the applicant agrees to provide: (i) at least thirty-three percent (33%) of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or (ii) at least fifteen percent (15%) of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, *and* (iii) the applicant agrees to pay for the reasonably necessary administrative costs incurred by the city pursuant to this Section.

B. Condominium conversions qualified under Subsection (A), above, may receive one of the following, at the city's option:

1. A flat density bonus of twenty-five percent (25%) to be provided within the existing structure or structures proposed for conversion, excepting that a condominium conversion is ineligible for this bonus if the apartments to be converted originally received a density bonus or incentives pursuant to any other provisions of this Chapter 4 or pursuant to California Government Code Section 65915. An applicant may choose to implement a lower density bonus.
2. Incentives of equivalent financial value in the form of a reduction or waiver of requirements or fees which the city might otherwise apply as conditions of conversion approval. "Other incentives of equivalent financial value" shall not be construed to require the city to provide cash transfer payments or other monetary compensation to the condominium conversion project or its applicant.

C. The city reserves the right to place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value pursuant to this Section as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

D. Condominium conversions are eligible only for the granting of a density bonus or incentive of equivalent value pursuant to this Section 9404, which bonus or incentive may not be granted in addition to, or combined with, any other incentives, concessions, density bonuses or waivers and reductions of development standards pursuant other sections of this Chapter 4. Nothing in this section shall be construed to require the city to approve a proposal to convert rental apartments into condominiums.



Section 9405 Density Bonus & Concessions/Incentive for Child Care Facilities.

A. A housing development that is eligible for a density bonus pursuant to Section 9402, above, and also includes a child care facility qualified under this Section 9405 is eligible for either of the following, at the option of the city, if requested in writing by the applicant:

1. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or
2. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

B. A child care facility will only qualify the housing development for an additional density bonus or incentive or concession if it is (i) located on the premises of, as part of, or adjacent to the housing development, and (ii) the housing development is otherwise eligible for a density bonus pursuant to Section 9402. As a condition of approving the additional density bonus for the housing development, the child care facility must meet all of the following criteria:

1. The child care facility may be used only for child care for a period of time that is as long as or longer than the period of time during which the affordable units are required to remain affordable as stated in deed restrictions and pursuant to section 9402(D); and
2. Of the children who attend the child care facility, the percentage of children of very low income households, lower income households, or moderate income households shall be equal to or greater than the percentage of dwelling units that are proposed to be affordable to very low income households, lower income households, or moderate income households pursuant to section 9402.

C. Notwithstanding any requirement of this Section, the city shall not be required to provide a density bonus or concession or incentive for a child care facility if it makes a written finding, based upon substantial evidence, that the community already has adequate child care facilities.

Section 9406 General Provisions Governing Density Bonus Calculations.

A. For the purposes of any provisions in this Chapter 4 , an applicant may elect to accept a lesser percentage of density bonus than that to which the housing development is eligible.

B. When calculating the number of permitted density bonus units, any calculations resulting in fractional units shall be rounded up to the next larger whole number.



C. For the purpose of calculating a density bonus, the dwelling units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the affordable units are located.

D. For the purposes of this Chapter 4, the "total units" or "total dwelling units" in a housing development does not include those units added by any density bonus.

E. Regardless of the number or extent of affordable units, senior housing, land dedication, child care facilities or other qualifications for a density bonus provided in any single housing development, no housing development may be entitled to a total density bonus of more than thirty-five percent (35%).

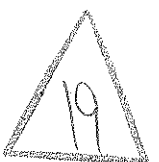


TABLE 1: Density Bonus Summary

Types of Affordable Units Providing Eligibility for a Density Bonus	Minimum %	Bonus Granted	Additional Bonus for Each 1% Increase in Affordable Units	% Affordable Units Required for Maximum 35% Bonus
A density bonus may be selected from only one category, except that bonuses for land donation may be combined with others, up to a maximum of 35%, and an additional sq. ft. bonus may be granted for a child care facility.				
Affordable Housing				
- Very low income	5%	20%	2.5%	11%
- Lower income	10%	20%	1.5%	20%
- Moderate income (ownership units only)	10%	5%	1%	40%
Senior citizen housing	Qualified senior citizen housing development	20% of the senior citizen housing units	--	--
Land donation for very low income housing	Land donated can accommodate 10% of market rate units, plus housing development qualifies for density bonus as an affordable or senior project.	15%	1%	30% of market-rate units (assuming housing development provides 5% very low income units)
Condominium Conversion				
- Lower income	15%	25% ⁽¹⁾	--	--
- Low/Mod income	33%	25% ⁽¹⁾	--	--



TABLE 1: Density Bonus Summary				
Types of Affordable Units Providing Eligibility for a Density Bonus	Minimum %	Bonus Granted	Additional Bonus for Each 1% Increase in Affordable Units	% Affordable Units Required for Maximum 35% Bonus
Child care facility	Housing development qualifies for density bonus as an affordable or senior project.	Sq. ft. in child care facility ⁽¹⁾	--	--
Notes: ⁽¹⁾ Maximum of 25% bonus for condominium conversions, or an incentive of equal value, at the city's option.				

Section 9407 Incentives and Concessions for Affordable Housing.

A. Definition Of A Qualified Concession Or Incentive. An applicant for a density bonus pursuant to Section 9402 may also submit to the city a written proposal for specific incentives or concessions as provided in this Section. The applicant may also request a meeting with the city's director of community development to discuss such proposal. For purposes of this chapter, concessions and incentives include any of the following:

1. Reductions in site development standards or modifications of zoning requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health & Safety Code. These include, without limitation, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required. In order to qualify as a "concession or incentive," the city must be able to find that the requested reductions in site development standards result in identifiable, financially sufficient, and actual cost reductions.
2. Approval of mixed use zoning in conjunction with the housing development if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial or other land uses are compatible with the housing development and the existing or planned development in the area where the proposed housing development will be located; or



3. Other regulatory incentives or concessions proposed by the applicant or the city, so long as the city can find that such proposals result in identifiable, financially sufficient, and actual cost reductions.

B. Findings To Deny Concession Or Incentive. The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of any of the following:

1. The concession or incentive is not required in order to provide for affordable housing costs or for affordable rents for the targeted units to be set as specified in Section 9202; or
2. The concession or incentive would have a specific adverse impact; or
3. The concession or incentive would be contrary to State or Federal Law.

C. Number Of Concessions Or Incentives. If all other provisions of this Section are satisfied, an applicant will be eligible for the following number of incentives and concessions:

1. One incentive or concession for housing developments where at least five percent (5%) of the total units are for very low income households, at least ten percent (10%) of the total units are for lower income households, or at least ten percent (10%) of the total units in a common interest development are sold to moderate income households; or
2. Two incentives or concessions for housing developments where at least ten percent (10%) of the total units are for very low income households, at least twenty percent (20%) of the total units are for lower income households, or at least twenty percent (20%) of the total units in a common interest development are sold to moderate income households.
3. Three incentives or concessions for housing developments where at least ten percent (15%) of the total units are for very low income households, at least twenty percent (30%) of the total units are for lower income households, or at least twenty percent (30%) of the total units in a common interest development are sold to moderate income households.



TABLE 2: Incentives and Concessions Summary			
Affordable units or Category	% of Affordable units		
Pursuant to State Density Bonus			
Affordable Housing			
- Very low income	5%	10%	15%
- Lower income	10%	20%	30%
- Moderate income (ownership units only)	10%	20%	30%
Maximum Incentive(s)/Concession(s) ⁽¹⁾⁽²⁾⁽³⁾	1	2	3
Notes: ⁽¹⁾ An incentive or concession may be requested only if an application is also made for a density bonus. ⁽²⁾ Incentives or concessions may be selected from only one category (very low, lower, or moderate). ⁽³⁾ No incentives or concessions are available for land donation.			

D. This Section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly-owned land, by the city or the waiver of fees or dedication requirements. Nor does any provision of this section require the city to grant an incentive or concession found to have a specific adverse impact.

E. The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

Section 9408 Waivers & Modifications of Development Standards.

A. Applicants granted a density bonus pursuant to Section 9402 may, by written proposal, seek a waiver, modification or reduction of development standards that would otherwise have the effect of physically precluding the construction of the housing development at the densities or with the concessions or incentives permitted pursuant to this chapter. The applicant may also request a meeting with the city to discuss such request for waiver and modifications.

B. In order to obtain a waiver or modification of development standards, the applicant shall show that the development standards will have the effect of precluding the construction of a housing development meeting the criteria of Section 9402(A), at the densities or with the concessions or incentives permitted by this chapter.

C. A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 9407.



D. The city may deny a request for any waiver, modification or reduction of development standards if the wavier, modification or reduction would have a specific adverse impact.

Section 9409 Parking Incentives.

Upon the written request of the applicant for a housing development meeting the criteria for a density bonus under Section 9402, the city shall not require a vehicular parking ratio that exceeds the following:

1. Zero to one-bedroom units: one on-site parking space.
2. Two to three-bedroom units: two on-site parking spaces.
3. Four and more bedroom units: two and one-half parking spaces.

Guest parking and handicapped parking shall be included within the maximum number of spaces that may be required. If the total number of parking spaces required for a housing development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this section, a housing development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking. For purposes of this chapter, the parking ratios set forth in this Section shall be deemed a concession or incentive available to the applicant under Section 9407.

Section 9410 Standards for Density Bonus Housing Developments.

A. Affordable units qualifying a housing development for a density bonus shall be reasonably dispersed throughout the housing development and compatible with the design of market-rate units in terms of appearance, materials, and finished quality. The applicant may reduce the interior amenities and square footage of inclusionary units, provided all units conform to all other requirements of the Carson Municipal Code.

B. For developments with multiple market-rate units containing differing numbers of bedrooms, affordable units qualifying a housing development for a density bonus shall be representative of the market-rate unit mix.

C. All building permits for affordable units qualifying a housing development for a density bonus shall be issued concurrently with, or prior to, issuance of building permits for the market rate units, and the affordable units shall be constructed concurrently with, or prior to, construction of the market rate units. Occupancy permits and final inspections for affordable units qualifying a housing development for a density bonus shall be approved concurrently with, or prior to, approval of occupancy permits and final inspections for the market rate units.



Section 9411 Application Requirements.

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this section shall be submitted with the first approval of the housing development and processed concurrently with all other applications required for the housing development.

B. For affordable units qualifying the housing development for a density bonus, the application shall include the following information:

1. A site plan identifying the base project without the density bonus, number and location of all inclusionary units, affordable units qualifying for the project for a density bonus, and proposed density bonus units; and
2. Proposed category(-ies) qualifying the housing development for a density bonus; and
3. Level of affordability of all affordable and inclusionary units and proposals for ensuring affordability, if applicable; and
4. A description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards.
5. If a density bonus or concession is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the findings included in Section 9403 can be made.
6. If the density bonus or incentives of equivalent financial value are based upon a condominium conversion with affordable units or senior citizen housing, the application shall demonstrate that the project meets the qualifications for a density bonus applicable to such projects under this chapter.
7. If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the findings included in Section 9405 can be made.

C. Upon submission of the application to the city, the director of development services or designee shall determine if the application is complete and conforms to the provisions of this chapter. No application for a first approval for a housing development requesting a density bonus, incentives, concessions, or waivers may be deemed complete unless an affordable housing plan is submitted conforming to the provisions of this chapter.

D. A request for a minor modification of an approved application may be granted by the city manager or designee if the modification is substantially in compliance with the original application and the conditions of approval. Other



modifications to the affordable housing plan shall be processed in the same manner as the original application.

Section 9412 Application Review.

A. An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this chapter shall be reviewed as part of the first approval of the housing development by the approval body with authority to approve the housing development, unless additional review by the planning commission or city council is required. An applicant proposing a housing development pursuant to this chapter, may submit a preliminary application prior to the submittal of any formal request for approval of a housing development.

B. Within ninety (90) days of receipt of the preliminary application the city shall provide to an applicant, a letter which identifies project issues of concern (the maximum financial assistance that the director of development services can support when making a recommendation to the city council), and the procedures for compliance with this chapter. The planning officer of the planning division shall inform the applicant that the requested additional incentives shall be recommended for consideration with the proposed housing development, or that alternative or modified additional incentives shall be recommended for consideration in lieu of the requested incentives. If alternative or modified incentives are recommended by the director of development services, the recommendation shall establish how the alternative or modified incentives can be expected to have an equivalent affordability effect as the requested incentives.

C. Before approving an application for a density bonus, incentive, concession, waiver, or modification, the approval body shall make the following findings:

1. The housing development is (i) eligible for a density bonus, and/or (ii) any concessions, incentives, waivers, modifications, or reduced parking standards requested conform to all requirements of this chapter, and (iii) supported by a financing mechanism for all implementation and monitoring costs.
2. If the density bonus is based all or in part on dedication of land, the application meets the qualifications and findings stated in Section 9403.
3. If the density bonus or incentives of equivalent financial value are based upon a condominium conversion with affordable units or senior citizen housing, that the application meets the qualifications for a density bonus applicable to such projects under this chapter
4. If the density bonus, incentive, or concession is based all or in part on the inclusion of a child care facility, the application meets the qualifications and findings stated in Section 9405.



5. If a waiver or modification is requested, the applicant has shown that the waiver, modification or reduction of development standards meets the qualifications and findings stated in Section 9408.

D. If the findings stated in subpart (C) of this Section 9412 can be made, and a request for an incentive or concession is otherwise consistent with this chapter, the approval body may deny a concession or incentive based upon written findings of any of the factors stated in Section 9407(B) for the denial or disqualification of a concession or incentive.

E. If the required findings stated in subpart (C) of this Section 9412 can be made, and a request for a waiver or modification is otherwise consistent with this chapter, the approval body may deny the requested waiver or modification based upon written findings of any of the factors stated in 9408(D) for the denial or disqualification of a waiver or modification.

F. Nothing in this section shall be interpreted to require the city to grant an incentive or concession or to waive or reduce development standards if that incentive, concession, waiver, or reduction has a specific adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

G. Any decision regarding a density bonus, incentive, concession, waiver, modification, or revised parking standard may be appealed as provided in Section 9173.4 of the Carson Municipal Code. In accordance with State law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

Section 9413 Developer Affordable Housing Agreement.

A. Applications requesting a density bonus shall agree to enter into a density bonus housing agreement with the city. The terms of the draft agreement shall be reviewed and revised as appropriate by the planning officer of the planning division, who shall formulate a recommendation to the planning commission for final approval. A density bonus housing agreement shall be made a condition of the discretionary planning permits for all housing developments pursuant to this chapter and shall be recorded as a restriction on any parcels on which the affordable units or density bonus units will be constructed.

B. The density bonus housing agreement shall be recorded prior to final or parcel map approval, or, where the housing development does not include a map, prior to issuance of a building permit for any structure in the housing development. The density bonus housing agreement shall run with the land and bind future owners and successors in interest."



Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 4. The City Clerk is hereby directed to certify the passage and adoption of this Ordinance and cause it to be published or posted as required by law.

[CONTINUED ON FOLLOWING PAGE]



First read at a regular meeting of the City Council held on the ____ day of _____, 2010 and adopted and ordered published at a regular meeting of said Council held on the ____ day of _____, 2010.

Mayor Jim Dear

ATTEST:

City Clerk Helen S. Kawagoe

City Manager Jerome G. Groomes

APPROVED AS TO FORM:

City Attorney



State of California)
) SS
County of Los Angeles)

I, the undersigned, City Clerk of the City of Carson, California, do hereby certify that the foregoing Ordinance No. ____ was duly introduced at an adjourned regular meeting of the City Council held on the ____ day of _____, 2010, and was duly approved and adopted at a regular meeting of said Council held on the ____ day of _____, 2010, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

City Clerk, City of Carson



CALIFORNIA CODES
GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local **government** shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety **Code**.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety **Code**.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil **Code**, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil **Code**.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil **Code** for persons and families of moderate income, as defined in Section 50093 of the Health and Safety **Code**, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety **Code**. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety **Code**.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in

Section 1351 of the Civil **Code**, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety **Code**, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety **Code**. The local **government** shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local **government** shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety **Code** that promote homeownership.

(B) For purposes of this subdivision, the local **government's** initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local **government's** proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety **Code**, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common

interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to

accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
--------------------------------------	--------------------------

10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26

32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22

18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development

of the very low income housing units on the transferred land, except that the local **government** may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local **government** prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil **Code**, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial

rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning **code** requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety **Code**, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources **Code**.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or

city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

- (A) Zero to one bedrooms: one onsite parking space.
- (B) Two to three bedrooms: two onsite parking spaces.
- (C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city,

county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a



commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied

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against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

Senate Bill No. 1818

CHAPTER 928

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor September 29, 2004. Filed
with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, Hollingsworth. Density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements, including a requirement that the applicant agree or propose to construct a specified percentage of the total units for specified income households or qualifying residents. Existing law also requires an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions. Existing law prohibits the legislative body from establishing fees to support the work of the planning agency that exceed the reasonable cost of providing the service for which the fee is charged.

This bill would revise the above-described provision to, among other things, require, when a developer seeks a density bonus for a housing development within, or for the donation of land within, the jurisdiction of the local government, that the local government provide a density bonus or other incentives or concessions for the production of housing units and child care facilities, as specified. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned

unit development as defined in subdivision (k) of, Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code. Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership. For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the percentage by which the initial sale price to the moderate-income household was less than the fair market value of the home at the time of initial sale.

(d) (1) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a condominium or planned development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a condominium or planned development.



(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a condominium or planned development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to



require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), “density bonus” means a density increase of at least 20 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b). For each 1 percent increase above 10 percent in the percentage of units affordable to lower income households, the density bonus shall be increased by 1.5 percent up to a maximum of 35 percent. For each 1 percent increase above 5 percent in the percentage of units affordable to very low income households, the density bonus shall be increased by 2.5 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 5 or 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of, or a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, in which at least 10 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a “density bonus” of at least 5 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. For each 1 percent increase above 10 percent of the percentage of units affordable to moderate-income households, the density bonus shall be increased by 1 percent up to a maximum of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next

whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 10 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development. For each 1 percent increase above the minimum 10 percent land donation described in paragraph (2) of this subdivision, the density bonus shall be increased by 1 percent, up to a maximum of 35 percent. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(3) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed



development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(4) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(5) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(6) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited

to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or a planned unit development or condominium project, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

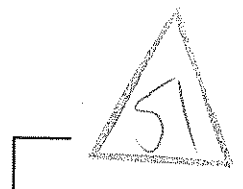
(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.



This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

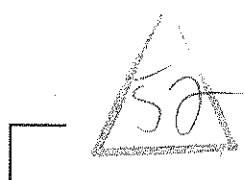
(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

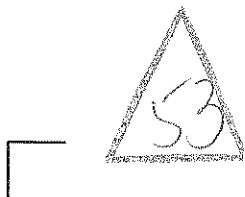
(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service



mandated by this act, within the meaning of Section 17556 of the Government Code.





SB 1818 Q & A

CCAPA's Answers to Frequently Asked Questions Regarding SB 1818 (Hollingsworth) – Changes to Density Bonus Law - 2005

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Background

The State of California enacted significant changes to the state's density bonus law, which went into effect on January 1, 2005. The legislation, SB 1818 introduced by Senator Hollingsworth (chaptered as Government Code Section 65915-65918), requires cities and counties to overhaul their ordinances to bring them into conformance with new state mandates. The previous law allowed for a 25% density bonus when housing projects provided between 10 – 20% of the units affordable (depending upon the level of affordability). In addition, cities and counties needed to provide at least one "concession" such as financial assistance or a reduction in development standards. The new law significantly reduces the amount of units that a developer must provide in order to receive a density bonus and requires cities and counties to provide between one to three concessions, depending upon the percentage of affordable units that the developer provides. It also imposes a new land donation rule, and statewide parking standards. Given the sweeping changes that the state has put in effect, CCAPA received numerous questions from its members regarding the new law and the following are answers to the most frequently asked questions.

Please note that the information provided is the opinion of experts in State housing law, but are not intended as legal advice. Please seek the guidance of your city attorney or county counsel on implementing the provisions of the new law in your jurisdiction.

Major Provisions

Density Bonus. The number of affordable units that a developer must provide in order to receive a density bonus is significantly reduced from prior law.

If at least 5% of the units are affordable to Very Low income households or 10% of the units are affordable to Low income households, then the project is eligible for a 20% density bonus.

If 10% of condominium or planned development units are affordable to Moderate income households, then the project is eligible to receive a 5% density bonus.

In addition, there is a sliding scale that requires:

- ?? an additional 2.5% density bonus for each additional increase of 1% Very Low income units above the initial 5% threshold;
- ?? a density increase of 1.5% for each additional 1% increase in Low income units above the initial 10% threshold; and
- ?? a 1% density increase for each 1% increase in Moderate income units above the initial 10% threshold.

These bonuses reach a maximum density bonus of 35% when a project provides either 11% Very Low income units, 20% Low income units, or 40% Moderate income units.

Continued Affordability. The continued affordability requirements for Very Low and Low income units have not changed. However, the requirements for Moderate income condominium units have changed significantly. The new law specifies that the city or county must insure that the initial occupants of Moderate income units meet the income qualifications. However, upon resale of the units the seller retains the down payment, the value of any improvements, and the seller's proportionate share of appreciation. The city or county recaptures its proportionate share of appreciation and those funds must be used within three years to promote Lower or Moderate income home ownership. It is unclear whether these units must be sold at market rate, or if a city or county can limit appreciation (see Question 7 below).

Concessions and Incentives. Cities and counties must grant more "concessions or incentives" reducing development standards, depending on the percentage of affordable units provided. "Concessions and incentives" include reductions in zoning standards, other development standards, design requirements, mixed use zoning, and any other incentive that would reduce costs for the developer. Any project that meets the minimum criteria for a density bonus is entitled to one concession from the local government agency, increasing up to a maximum of three concessions depending upon the amount of affordable housing provided. For example:

- ?? For projects that provide either 5% of the units affordable to Very Low income households, 10% of the units affordable to Lower Income households, or 25% Moderate Income condominiums, then the developer is entitled to one concession.
- ?? When the number of affordable units is increased to 10% Very Low income units, 20% Lower income units, or 20% Moderate income units, then the developer is entitled to two concessions.
- ?? When the number of affordable units is increased to 15% Very Low income, 30% Lower income, or 30% Moderate income units, then the number of concessions is increased to three.



Waivers and Modifications of "Development Standards." A city or county may not impose a "development standard" that makes it infeasible to construct the housing development with the proposed density bonus. *In addition to* requesting "incentives and concessions," applicants may request the waiver of an unlimited number of "development standards" by showing that the waivers are needed to make the project economically feasible. The bill defines "development standards" as "site or construction conditions."

Land Donation. Additional density is available to projects that donate land for residential use. The land must satisfy all of the following requirements:

- a) have the appropriate general plan designation and zoning to permit construction of units affordable to Very Low income households in an amount not less than 10% of the units in the residential development;
- b) be at least one acre in size or of sufficient size to permit development of at least 40 units; and
- c) be served by adequate public facilities and infrastructure.

The base density bonus is 15%, with increases in 1% increments for each percentage increase in the units that can be accommodated above the minimum 10% of the units described in (a), up to a maximum of 35%. The maximum combined density bonus is 35% under all rules. When the land is transferred, it must have all of the permits and approvals necessary for the development of the Very Low income housing units. The land and affordable units must be subject to deed restrictions ensuring continued affordability. The city or county may require that the land be transferred to a developer instead of the city.

Parking Standards. If a project qualifies for a density bonus, the developer may request (and the City and County must grant) new parking standards for the entire development project. The new standards are:

- ?? zero to one bedroom – one on-site parking space
- ?? two to three bedrooms – two onsite parking spaces
- ?? four or more bedrooms – two and one-half on-site parking spaces.

These numbers are inclusive of guest parking and handicapped parking and may be tandem or uncovered (but cannot be on-street). The parking standards may be requested even if no density bonus is requested.

Questions

1. ***Does this law apply to charter cities and charter counties?***

Yes.

2. ***Can inclusionary requirements be imposed on the bonus units?***

Most experts agree that inclusionary requirements cannot be imposed on the density bonus units themselves. The reasoning is that the Legislature intended to give developers market-rate units in exchange for affordable units. For instance,



if a 100-unit project becomes a 120-unit project after receiving a density bonus, the inclusionary requirements may be imposed only on the original 100 units, not the 20 bonus units. If a city has a 20% inclusionary requirement, normally the city would require 24 inclusionary units in a 120-unit project (20% of 120 units). However, if 20 units are density bonus units, then the 20% inclusionary requirement can only be imposed on 100 units, requiring only 20 inclusionary units (20% of 100 units). The net impact is that only 16.7% (20/120) of the total units will be affordable inclusionary units, rather than 20% (24/120) as intended by the inclusionary ordinance.

3. *Do inclusionary units qualify a project for a density bonus?*

The density bonus law applies when an applicant "seeks a density bonus" and "agrees to construct" the required percentages of affordable units. There have been two interpretations of this section.

Many localities interpret the bill to mean that if the inclusionary units meet the requirements of the density bonus law, then the inclusionary units will qualify the development for a density bonus. For instance, in these jurisdictions, if an inclusionary ordinance requires that ten percent of the units be affordable to Low income households, a project complying with the ordinance will be eligible for a 20% density bonus.

Other localities interpret this to mean that when a local jurisdiction imposes its inclusionary housing requirement, the applicant is not "agreeing to construct" the units and so is not eligible for a density bonus. The legislative history of the amendments to SB 1818 confirms that the changes in the law were not intended to affect an inclusionary zoning ordinance.

You may want to discuss this issue with your city or county attorney.

Note that no density bonus need be given in any case unless an applicant actually "seeks"--applies for--the bonus, even if the project would otherwise be eligible for a density bonus.

4. *Can a developer successfully argue that the inclusionary requirements make the project infeasible?*

No. Developers can only request a waiver of "development standards" that make a project infeasible. "Development standards" are defined as "site or construction conditions." The proponents of the bill included this definition specifically so that an inclusionary ordinance would not be considered a development standard. An inclusionary ordinance doesn't regulate site or construction conditions; it only affects the economics of the project. Consequently, a developer cannot request a waiver by arguing that the inclusionary ordinance makes the project infeasible.

Some inclusionary ordinances do have requirements that might be considered to be site and construction conditions such as requiring dispersal of units, similarity in design to market-rate units, etc. Presumably a developer could try to show that these are site or construction conditions and request that they be waived, following the procedures discussed in Question 9.



5. *Can a city or county require design review for density bonus projects, even if it renders the project infeasible?*

The short answer is "no"--if, indeed, design review will make the project infeasible. As discussed in the previous question, no local agency can apply any development standard that will preclude the development of a density bonus project. How would this work in the case of design review? The process of design review is not a development standard, so no waiver could be requested. Design review conditions, however, usually involve site or construction requirements, so would probably be considered to be "development standards." The issue would most likely arise if an applicant argued that design review conditions made the project infeasible and presented evidence showing that the project would not be economically feasible with the conditions. Cities and counties should consider including in their local ordinances a process for evaluating requests for waivers including the type of economic information which must accompany the request and how the information will be evaluated.

6. *Can a city or county place additional resale restrictions on a Moderate income condominium and planned developments?*

If an applicant receives no public subsidy and agrees to impose the equity-sharing required by SB 1818, the city or county cannot require additional resale restrictions (see discussion in Question 7 below).

However, if a city or county has an inclusionary ordinance that requires Moderate income units to have resale restrictions or longer periods of affordability, the city is under no obligation to count as inclusionary units, those Moderate income units that meet only density bonus standards. For instance, assume that a city has a 15% Moderate income inclusionary requirement and requires a 55-year resale restriction. A developer could propose 15% Moderate income units with the equity-sharing required by SB 1818 and receive a density bonus. However, since none of the units would meet the standards in the City's inclusionary ordinance, the City would not be required to count any of the units as inclusionary units. The developer would have to provide another 15% Moderate income units meeting the City's standards for resale restrictions and 55 years of affordability. In this case, most developers would choose to apply the city's standards to their Moderate income units.

7. *Is there a requirement for continued affordability for Moderate income condominium and planned developments?*

No, only the initial occupant must meet the affordable income criteria. After the initial owner sells the unit, that person is entitled to receive the value of their down payment, improvements to the property, and proportional share of the appreciation of the unit. The City or County receives its proportional share of the appreciation and must use that money within three years to promote affordable, ownership housing.

The bill is not clear about how appreciation is defined. Proponents of the bill state that it was intended to work as follows: if a locality makes a unit available for



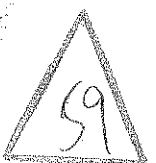
\$200,000 to a moderate income purchaser but the unit has a value at the time of purchase of \$300,000, then the locality gets to recapture the \$100,000 subsidy upon resale. In addition, if the unit goes up in value another \$30,000 between the date of purchase and the date of resale, the locality and purchaser split the appreciation per the formula in the bill. The bill does not specifically require that the units be re-sold at fair market price, which may allow localities to impose resale controls limiting the amount of appreciation.

8. *If a developer is proposing a mixture of affordable housing types (i.e., 5% Very Low plus 10% Low income units) how is the density bonus calculated?*

SB 1818 amended Government Code Section 65915 to delete the language in subsection (l), which previously stipulated that an applicant who "agrees to construct both 20 percent of the total units for Lower income households and 10 percent of the total units for Very Low income households is entitled to only one density bonus and at least one additional concession or incentive". Localities should assume, therefore, that if the proposed percentage of units by affordable housing type meets or exceeds the thresholds stipulated in subsection (g) they will have to grant the 20 percent density bonus to which the applicant is entitled for each type of affordable housing that exceeds the threshold specified in subsection (g) (1). Note, however, that this subsection now specifies that the maximum density bonus to which an applicant is entitled is 35 percent, in contrast to the previous requirement, which stated that the applicant was entitled to a minimum bonus of 25 percent but did not specify a maximum. If the applicant proposes a mixture of affordable housing types that meets or exceeds the threshold for more than one housing type, he or she is, therefore, not entitled to receive a bonus that exceeds 35 percent of the density that would otherwise be allowed by applicable zoning and the land use element.

Neither the former version of Sec. 65915 nor the amendments in SB 1818 provide more guidance about how agencies should calculate the density bonus for a project that includes a mixture of affordable housing types when the project does not meet the specified thresholds for each affordable housing type. For example, an applicant might propose to make 5 percent of the units affordable to Very Low income households plus 5 percent affordable to Low income households. In that case, one way to calculate the bonus would be to grant the incremental density allowed in subsection (g) for the Low income units (1.5 percent multiplied by 5 or a total of 7.5 percent for the Low income units) in addition to the 20 percent bonus to which the applicant is entitled for the 5 percent Very Low income units.

Another way to calculate a mixture of affordable housing types is to first evaluate the Very Low income units only. If a project has 5% Very Low income units then it would be entitled to a 20% bonus. Then evaluate the 5% Low income units by themselves. These don't qualify for any density bonus (10% Low income units required). Then, consider all 10% of the units as Low income units. This again permits a 20% bonus. Consequently, the project is only entitled to a 20% bonus. (This has the effect of encouraging developers to have more Very Low income units, since 8% Very Low income units would give the developer the 27.5% density bonus.) Since the law is silent on which manner to calculate a density



bonus for a mixture of income levels, it is important for the city or county to choose a method and be clear and consistent in the implementation.

Also, cities and counties should amend their density bonus provisions to delete any reference to the "one density bonus" limit that Sec. 65915 previously imposed. They may want to amend their ordinances to also specify how to calculate both the minimum and the maximum number of additional units that might be granted pursuant to this section and to specify the 35 percent maximum stipulated as a result of SB 1818.

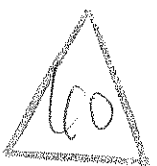
9. *Can a city or county require the developer to choose from a specific list of concessions chosen by the local agency? What happens if they want a concession that is not on the list?*

A city or county can request that a developer choose a concession or incentive from a list that the city or county has prepared as acceptable concessions; however, under certain circumstances, the developer may be entitled to other incentives not on the city or county list.

Section 65915 (l) defines "concession or incentive" as a reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission. Examples include a reduction in setback and square footage requirements and reduction in parking ratios. Approval of mixed use zoning is a "concession" if the non-residential use is compatible with the housing project and the existing or planned development in the area. In addition, the developer may propose other regulatory incentives or concessions that result in "identifiable, financially sufficient, and actual cost reductions"

Subsection (d)(1) does make clear that the city or county may refuse to grant a concession or incentive if it makes certain findings based upon substantial evidence. The type of evidence that would be required to support such findings is spelled out in subsections (d)(1) (A) and (B) and includes a determination that the concession or incentive is not required in order to provide the proposed affordable housing units or "would have a specific adverse impact ... upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources" so long as there is no way to mitigate or avoid the specific impact without making the development unaffordable to Low and Moderate income households. As noted in subsection (d)(3), these are essentially the same findings that Government code Section 65589.5 requires in order to deny or impose certain conditions on an affordable housing development.

Local agencies are advised to pay close attention to these provisions because of the penalties that subsection (e) imposes on localities that refuse to waive standards and requirements in violation of the law. In addition to being ordered to grant the requested waiver, the local agency may be liable for the plaintiff's attorney's fees and litigation costs.



In addition to the required concessions and incentives, note that subsection (f) states that cities may not apply development standards that would preclude the development of the density bonus units. The applicant may request a waiver and "shall show that the waiver or modification is necessary to make the housing units economically feasible." Local agencies should, therefore, require that applicants provide financial data showing that the proposed waiver or modification is necessary to make the affordable units economically feasible. Pursuant to subsection (d) (3), agencies should also amend their ordinances to establish procedures for accommodating qualified projects by "waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites." Applicants proposing qualified projects should not be subjected to a variance procedure but, instead, should be able to apply for an exception or waiver based on specific findings, including economic considerations, that are spelled out in the ordinance.

10. Do the new reduced parking requirements apply to the affordable units only or to the entire project?

The new parking standards apply to the entire project, both affordable and market rate units but only upon request of the developer.

11. Can cities and counties require guest parking for affordable projects?

No. The new parking standards that apply upon request of the developer are inclusive of guest parking and handicapped parking. It should be noted that state law cannot preempt federal ADA requirements.

12. Does a city or county need to conduct a CEQA analysis prior to adopting changes to their local ordinances in order to comply with the new law?

Yes. A change in zoning or other land use ordinance is a project subject to CEQA (State CEQA Guidelines Section 15378(a)[1]; *Bozung v. LAFCO* [1975] 13 Cal.3d 263). Under CEQA, the baseline for determining the significance of a project is the existing environment. SB 1818 will require agencies to adopt ordinances that may result in significant indirect effects on the environment by reducing the effectiveness of existing protective standards. Adopting new, less restrictive standards may result in a significant effect.

For example, in *City of Redlands, et al. v. County of San Bernardino* (2002) 96 Cal.App.4th 398, Redlands and other cities sued San Bernardino County over a general plan amendment which modified existing County general plan provisions relating to development within City spheres of influence. Where previous County policy had been to defer to City development standards within the spheres (including more restrictive regulations and growth control measures), the general plan amendment would have provided the County more leeway to approve projects that did not conform to City standards. The County adopted a negative declaration for the general plan amendment.

The court found that the County's initial study "does not provide evidence to show how such a shift in policy would have little or no effect on the environment."



The court noted that "CEQA reaches beyond mere changes in the language in the agency's policy to the ultimate consequences of such changes to the physical environment." Although the CEQA analysis is not required to be as detailed as a project-specific analysis, it is required to analyze the expected secondary effects of the general plan amendment. The cities presented substantial evidence, in the form of specific examples of city standards that were more restrictive than County standards and that would no longer be required within unincorporated spheres if the general plan amendment were approved, that the general plan amendment may have a significant effect. The court ordered preparation of an EIR.

13. *Are affordable projects exempt from CEQA or can a local government agency require negative declarations or environmental impact reports for affordable projects with inadequate parking?*

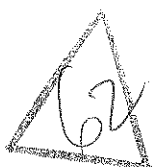
SB 1818 does not establish an exemption from CEQA requirements. The regulatory concessions that must be offered to a qualifying project do not and cannot include non-compliance with CEQA. CEQA operates independently of SB 1818 and is not limited by that statute. However, a project may qualify for a categorical exemption under State CEQA Guidelines Section 15332 (Infill Development Projects) if it meets the criteria set out in that section and is not subject to any of the exceptions established under Section 15300.2.

Separately, Public Resources Section 21159.24 provides a qualified, statutory exemption for specified inclusionary infill housing projects. This exemption would not apply if there is "a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances."

An agency must prepare an initial study for any project (including an affordable project) that is not exempt from CEQA. If there is substantial evidence (e.g., facts or expert opinion based on facts) that the project may result in a significant effect on the environment, an EIR must be prepared. If there is no substantial evidence to that effect, a negative declaration or mitigated negative declaration can be prepared.

The baseline for determining the significance of a project impact is the existing environment. The significance of a project's impacts depends upon the extent of adverse change to the environment that would result from the project. Where a project involves a density bonus, the "project" for purposes of CEQA is the proposed activity including the bonus and any related concessions.

Government Code Section 65915 comprises the density bonus law. Subdivision (d) authorizes a local agency to deny a proposed incentive/concession when there is substantial evidence that the incentive/concession would have a "specific adverse impact" on "public health and safety" (as defined in Government Code Section 65589.5(d)[2]), or the physical environment, or on a property listed on the California Register of Historical Resources and there is "no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households." This would authorize an agency to deny a proposed incentive/concession when an EIR has been prepared that identifies significant project impacts that either



cannot be avoided or that could be mitigated, but the mitigation would make the project unaffordable. Because a mitigated negative declaration can only be released when the applicant has agreed to the mitigation measures, a local agency could also deny incentives/concessions on the basis of an initial study if the applicant was unwilling to agree to the mitigation measures due to cost. The EIR or the initial study would provide the "substantial evidence" necessary to support denial under Section 65915(d).

It is important to note that the clear intent of the legislation is to facilitate the construction of affordable housing through density bonuses and reductions in local development standards. Therefore, the CEQA analysis conducted by the city or county should focus on reasonable CEQA impacts, and not as a potential loophole to make the process of building affordable housing more difficult.

