

California's Density Bonus Law provides housing developers with powerful tools to encourage the development of much needed affordable and senior housing. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers up to a 35% increase in project densities, depending on the amount of affordable housing provided. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, and incentives and concessions such as reduced setback and minimum square footage requirements. The Density Bonus is a state mandate, meaning that a developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right.

**Projects Entitled to Density Bonus.** Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents, or at least 10% of the housing units are restricted to lower or moderate income residents.
- At least 20% of the housing units are for low income college students.
- At least 10% of the housing units are for very low income transitional foster youth, disabled veterans or homeless persons.
- Donation of at least one acre of land to the city/county for very low income units.
- The project is a senior citizen housing development or mobilehome park age restricted to senior citizens (no affordable units required).

**Amount of Density Bonus.** The density bonus amount is set on a sliding scale based upon the percentage of affordable units in the project, ranging from 5% to 35% additional units over the number ordinarily permitted.

**Incentives and Concessions.** In addition to the density bonus, the city or county is also required to provide one or more “incentives” or “concessions” to each project which qualifies for a density bonus, which can include benefits such as a reduction in setback or minimum square footage requirements, approval of mixed use zoning or other regulatory benefits. The city/county is required to grant the proposed concession or incentive unless it would not reduce project costs, would cause public health or safety or environmental problems, would harm historical property, or would be contrary to law. The city/county may (but is not required to) provide financial benefits to the project as an incentive/concession. Qualifying developers are entitled to incentives and concessions even without a request for density bonus units.

**Waiver or Reduction of Development Standards.** If any other city/county development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may

propose the waiver or reduction of those standards. The city/county must waive or reduce the standard unless it would cause a public health, safety or environmental problem, harm historical property, or would be contrary to law.

**Maximum Parking Requirements.** Upon the developer's request, the city/county may not require more than 1 parking space for a studio or 1 bedroom unit, 2 parking spaces for a 2 or 3 bedroom unit, or 2 ½ parking spaces for a 4 bedroom unit. Lower parking ratios apply to certain projects with access to public transit. Parking spaces may be provided through tandem or uncovered parking.

**Income and Affordability Requirements.** For rental units, maximum tenant incomes and rents are restricted by agreement for a 55 year term. For very low income units, rents may not exceed 30% x 50% of the area median income, and for lower income units, rents may not exceed 30% x 60% of the area median income (special income and rent standards apply to student housing). Affordable for sale units must be sold to the initial buyer at an affordable housing cost based on state formulas, with buyers entering into an equity sharing agreement with the city/county. The equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city/county a portion of any appreciation received on resale. The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of the appreciation. The income and affordability requirements are not binding on resale purchasers of for-sale units.

**Other Projects That Qualify for Density Bonus.** Density bonuses are also available for condominium conversion projects, housing projects that provide child care, and commercial developments that include affordable housing provided by affordable housing developer partners. A city/county is also permitted to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit.

**Density Bonus and Inclusionary Housing Requirements.** Many of California's cities and counties have adopted inclusionary housing ordinances that require a specified percentage of units in a new or rehabilitated housing development to be restricted as affordable units. Case law clarifies that inclusionary units qualify as affordable units for purposes of the Density Bonus Law.

**Replacement Housing Requirements.** Developers obtaining a density bonus are required to replace existing units that were previously occupied by very low or lower income households or subject to rent control, when those units have been demolished or vacated prior to the density bonus application.

For a detailed explanation of the law, please see the "[Guide to the California Density Bonus Law](#)" co-authored by Jon Goetz. Please contact Jon at [jgoetz@meyersnave.com](mailto:jgoetz@meyersnave.com) or 800.464.3559. Jon leads Meyers Nave's statewide Housing and Real Estate Development Practice team.