

DENSITY BONUS LAW

New and
IMPROVED

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PURPOSES

- *More affordable housing* (Housing advocates)
- *More incentives for inclusionary housing* (CAR)
- *Increase in housing supply* (Both)



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BASIC PROVISIONS



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Eligible Projects

1. *Affordable Housing*
2. *Senior Housing*
3. *Land Donation*

No Change:
*Child Care Facilities &
Condominium Conversions*

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Affordable Housing

Available Incentives:

- Density Bonus (20 - 35%)
- Reduced Parking Standards
- Incentives and Concessions
- Waivers

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Senior Housing

Available Incentives:

- Density Bonus (20%)
- Reduced Parking Standards
- Waivers

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Land Donation

Available Incentives:

- Density Bonus (15 - 35%)
- Waivers

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**Density Bonus:
Affordable & Senior Housing**

- 5% *very low income*
- 10% *lower income*
- Qualified *senior* housing project

= 20% density bonus

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**Density Bonus:
Affordable Housing**

- 10% *moderate income* (120% of Area Median Income; for-sale housing only)

= 5% density bonus

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Density Bonus: Affordable Housing		
<i>Sliding Scale to Reach 35% Bonus</i>		
<i>Income Category</i>	<i>Add'l Bonus for 1% Inc.</i>	<i>% Units to Reach 35% Bonus</i>
Very Low	2.5%	11%
Lower	1.5%	20%
Moderate	1%	40%

Requirements for Continued Affordability
<i>Very low</i> : 30 years
<i>Low</i> : 30 years
<i>Moderate</i> : Affordable to initial purchaser, with equity-sharing & reinvestment

Reduced Parking: Affordable & Senior Housing
• Studios + 1 bedroom: 1 space
• 2-3 bedrooms: 2 spaces
• 4+ bedrooms: 2.5 spaces

Reduced Parking:
Affordable & Senior Housing

- Tandem parking and uncovered parking OK
- Includes guest & handicapped parking



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Reduced Parking:
Affordable & Senior Housing

Standards apply to BOTH affordable AND market-rate units

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Incentives & Concessions:
Affordable Housing *Only*

Developer, not the City, chooses

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**Incentives & Concessions:
Affordable Housing *Only***

Reductions in "site development standards" ("site or construction conditions")

- Modifications of zoning requirements: setbacks, parking, lot size, etc.
- Reductions in architectural design requirements
- Other regulatory concessions

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**Incentives & Concessions:
Affordable Housing *Only***

Mixed use development that:

- Reduces housing cost
- Is compatible w/ existing and planned development



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**Incentives & Concessions:
Affordable Housing *Only***

- All must "result in identifiable, financially sufficient, and actual cost reductions"
- Available only if a density bonus is requested

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Incentives & Concessions: Affordable Housing <i>Only</i>			
<i>"Incentives and Concessions"</i>			
<i>Very low income</i>	5%	10%	15%
<i>Lower & moderate income</i>	10%	20%	30%
<i>Maximum Concessions</i>	1	2	3

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Density Bonus: Land Donation		
<i>Sliding Scale to Reach 35% Bonus</i>		
<i>Income Category</i>	<i>% of Total Units on Donated Land</i>	<i>Basic Bonus</i>
Very Low	10%	15%
<i>Income Category</i>	<i>% of Total Units on Donated Land</i>	<i>Maximum Bonus</i>
Very Low	30%	35%
		(1% increase for 1% donation) ²⁰

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Density Bonus: Land Donation
<p>City has substantial discretion in determining whether to accept a land donation</p> <p>G.C. 65915(h)</p>

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**Waivers & Reductions:
All Categories**

- Cannot apply standards to preclude construction at densities or with concessions.
- Developer must show that waivers are "necessary to make the units economically feasible"

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CITY DISCRETION



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**Statutory Limits on
Discretion**

- No grounds for denying density bonuses
- No grounds for denying reduced parking

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Statutory Limits on Discretion

- Limited grounds for denying incentives, concessions, waivers, reductions

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**Grounds for Denial:
Incentives & Concessions**

- Concession not required to provide for affordable rents or ownership costs

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**Grounds for Denial:
Incentives & Concessions
Waivers & Reductions**

- Specific adverse impact on public health, safety, or the physical environment and no feasible way to mitigate impact.
- Adverse impact on property listed in the California Register of Historic Resources

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**Grounds for Denial:
Waivers & Reductions**

- Applicant must show that waiver is necessary to make units economically feasible.

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**Grounds for Denial:
Requirements**

- Findings must be in writing and based on substantial evidence
- *Attorneys fees potentially available*

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Environmental Review

- Density bonus law does not preempt CEQA
- Issues of cumulative impact, infrastructure adequacy, and applicability of general plan & specific plan EIRs

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FREQUENTLY ASKED QUESTIONS



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Relationship to Inclusionary Ordinances

Can inclusionary requirements be applied to bonus units?

Do inclusionary units qualify a project for a density bonus?

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Relationship to Inclusionary Ordinances (cont.)

Can a developer request that inclusionary requirements be waived?

What if inclusionary requirements are stricter than density bonus law?

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City Ability to Choose Incentive or Concession

The developer can select the concession, with justification.

BUT:

The City could adopt procedures to encourage certain incentives.

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Waiver of Design Review As Incentive or Concession

Can the developer request the waiver of design review requirements as an incentive or concession?

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Continued Affordability of Moderate-Income Units

Can cities use resale restrictions to guarantee continued affordability of moderate-income units?

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Relationship to General Plan and Zoning

Density bonuses and concessions trump the General Plan and zoning.

By themselves, require no discretionary approval.

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Relationship to CEQA

Can an agency turn down a density bonus because there is a significant impact that cannot be mitigated, and no overriding considerations?

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2005 Bills

AB 1450:

- Would permit resale restrictions

SB 435:

- Would remove economic feasibility requirement for waivers
- Requires density bonuses for inclusionary

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CONCLUSION

- *A complicated, poorly written law*
- *Too early to know the effects*
- *Watch AB1450 & SB435*



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California Density Bonus Law

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