

A GUIDE TO CALIFORNIA DENSITY BONUS LAW

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LEAGUE OF CALIFORNIA CITIES CITY ATTORNEYS DEPARTMENT FALL CONFERENCE 2016

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PROJECTS ELIGIBLE FOR DENSITY BONUSES

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- Affordable Housing:
 - ▣ Five percent of the units affordable to very-low income households (incomes 50% and less of median)
 - ▣ Ten percent of the units affordable to lower income households (incomes 80% or less of median)
 - ▣ Ten percent of the units affordable to moderate income households (120% of median income) but only if project is common interest for sale development
 - ▣ Ten percent of the units for transitional foster youth, disabled vets or homeless persons and restricted to very-low income rents
- Affordable unit requirements apply only to the project without the density bonus

PROJECTS ELIGIBLE FOR DENSITY BONUSES

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- Continued Affordability
 - Rental units – must remain affordable for 55 years – unless subsidy program requires longer period
 - Ownership units – only affordable to initial occupants – City or County must enforce equity share agreement at sale unless the equity sharing agreement conflicts with another public funding source requirement

PROJECTS ELIGIBLE FOR DENSITY BONUSES

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- Senior Housing
 - ▣ Senior Housing Development (as defined in CC Section 51.3 and 51.12) or mobile home park that limits residency to seniors is eligible for a density bonus
 - Senior housing development must contain at least 35 units

PROJECTS ELIGIBLE FOR DENSITY BONUSES

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□ Replacement Housing

- Project that results in the demolition or removal of rental units affordable to or occupied by very-low or low income households is not eligible for a density bonus unless the units are replaced
- Applies to:
 - Units subject to recorded restrictions
 - Units subject to rent control
 - Units occupied by very-low or low income households
- If income of households is not known, assume households are occupied by low income households in the same proportion as low income renters in the jurisdiction (AB 2556)

PROJECTS ELIGIBLE FOR DENSITY BONUSES

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□ Land Donations

- Land donated must be large enough to accommodate at least 10% of the market-rate units at densities suitable for very-low income housing
- Strict criteria for land donations, including:
 - At least one acre in size or large enough to accommodate 40 units
 - Be located within the boundary of the development or within ¼ mile of it
 - Have appropriate general plan designation

PROJECTS ELIGIBLE FOR DENSITY BONUSES

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- Condominium Conversions
- Child Care Facilities
 - ▣ Must remain in operation for duration of affordable housing covenants
 - ▣ Must ensure that children attending come from very-low, low or moderate income households in same or greater proportion as the housing development

DENSITY BONUS AVAILABLE

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Affordable Units or Category	Minimum Percent Units in Category	Bonus Granted	Additional Bonus for Each One Percent Increase in Units in Category	Percent Units in Category Required for Maximum 35 percent Bonus
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 housing (35 units or more; no affordable units required) or Senior Mobile Home Parks	100% senior	20% (senior units only)	--	--

DENSITY BONUS AVAILABLE

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Affordable Units or Category	Minimum Percent Units in Category	Bonus Granted	Additional Bonus for Each One Percent Increase in Units in Category	Percent Units in Category Required for Maximum 35 percent Bonus
Condominium conversion – moderate-income	33%	25% ^(a)	--	--
Condominium conversion – lower-income	15%	25% ^(a)	--	--
Land donation for very-low income housing	10% of market-rate units	15%	1%	30%

Notes:
^(a) Or an incentive of equal value, at the city's option.

DENSITY BONUS AVAILABLE

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Affordable Units or Category	Minimum Percent Units in Category	Bonus Granted	Additional Bonus for Each One Percent Increase in Units in Category	Percent Units in Category Required for Maximum 35 percent Bonus
Child care center	--	Sq. ft. in day care center ^(a)	--	--
Transitional foster youth, disabled vets or homeless	10%	20% of the restricted units		

Notes:
^(a) Or an incentive of equal value, at the city's option.

ADDITIONAL REQUIREMENTS (EFFECTIVE JANUARY 1, 2017)

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- All density calculations must be rounded up (base density, bonus units and affordable units)
- Cities must adopt application procedures and timelines
- Cities cannot require preparation of additional report or study not required by State law but can require reasonable documentation to establish eligibility for incentives or concessions, waivers or reductions, or increased parking ratios near major transit stops

INCENTIVES & CONCESSIONS

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- Reduction in site development standards or modifications of zoning/architectural design requirements that result in “identifiable and actual cost reductions to provide for affordable housing”
- Mixed-use zoning that reduces the cost of the housing if the non-residential uses are compatible with housing and other area development
- Other regulatory incentives or concessions that result in “identifiable and actual cost reductions to provide for affordable housing”
- May request without request for density bonus

NUMBER OF INCENTIVES

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Target Units or Category	Percent of Target Units		
Very-low income	5%	10%	15%
Lower income	10%	20%	30%
Moderate income (ownership units only)	10%	20%	30%
Condominium conversion – 33% moderate income	City’s option: 1 concession or a DB		
Condominium conversion – 15% lower income	City’s option: 1 concession or a DB		
Day care center	City’s option: 1 concession or a DB		
Maximum Incentive(s)/ Concession(s)	1	2	3

INCENTIVES

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- Under new law, cities cannot require General Plan amendment, local coastal plan amendment, zoning change, study or other discretionary approval for incentives
- Cities may request “reasonable documentation” to determine eligibility
- Cities may still be permitted to require a pro forma to justify an incentive
- No requirement for city to provide any “direct financial incentives”

DENIAL OF INCENTIVES

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- Do not meet the threshold requirements set in the statute – e.g., they do not result in “identifiable, and actual cost reductions to provide for affordable housing”

OR

- 1 of 3 specified findings:
 - ▣ Not required for affordability
 - ▣ Adverse impact on health/safety, physical environment or historic resources with no feasible mitigation
 - ▣ Contrary to federal or state law
- Cities bear burden of proof

WAIVERS AND MODIFICATIONS

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- Only available for development standards that physically preclude the construction of the project that qualifies for a density bonus or incentive
- Developer may request unlimited waivers

DENIAL OF WAIVERS

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- Adverse impact on health and safety or the physical environment or historic resources with no feasible mitigation

REDUCED PARKING STANDARDS

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- Requires reduced parking requirements for projects that qualify for a density bonus even if developer does not request density bonus, incentives or waivers
- Developer can request even lower parking ratios as a concession or waiver under density bonus law
- City discretion is extremely limited

BASIC REDUCED PARKING RATIOS

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- Applicable if project qualifies for a DB because it is a senior project or provides affordable housing
- Reduced Ratios:
 - ▣ 0-1 bedroom unit: 1 on-site parking space
 - ▣ 2-3 bedroom unit: 2 on-site parking spaces
 - ▣ 4-more bedroom unit: 2½ on-site parking spaces
- Reduced ratios apply to market rate units as well as density bonus units

TRANSIT STOP PARKING RATIOS

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- AB 744, effective 1/1/16
- Even lower parking ratios if located within 1/2 mile of a major transit stop
- Requirements differ by type of development and level of affordability

TRANSIT STOP PARKING RATIOS

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- Rental or ownership housing development with:
 - ▣ At least 11% very-low income or 20% low income units **and**
 - ▣ Within one-half mile of a major transit stop **and**
 - ▣ Unobstructed access to the major transit stop
- 0.5 parking space per bedroom

TRANSIT STOP PARKING RATIOS

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- Rental housing development with:
 - All units affordable to lower income except manager's unit **and**
 - Within one-half mile of a major transit stop **and**
 - Unobstructed access to the major transit stop
- 0.5 parking space per unit

TRANSIT STOP PARKING RATIOS

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- Rental senior citizen housing development with:
 - All units affordable to lower income except manager's unit **and**
 - Either has paratransit service **or** is within one-half mile of fixed bus route service that operates 8 times per day, with unobstructed access to that service
- 0.5 parking space per unit

TRANSIT STOP PARKING RATIOS

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- Rental special needs housing development with:
 - All units affordable to lower income except manager's unit **and**
 - Either has paratransit service **or** is within one-half mile of fixed bus route service that operates 8 times per day, with unobstructed access to that service
- 0.3 parking space per unit

PARKING STUDIES FOR TRANSIT

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- Cities may require higher parking ratios for transit stop developments if supported by parking study, paid for by city and conducted in last 7 years
- Ensure that study includes all analyses mandated by statute
- Adopt written findings based on study
- Maximum parking ratios cannot exceed basic reduced parking ratios

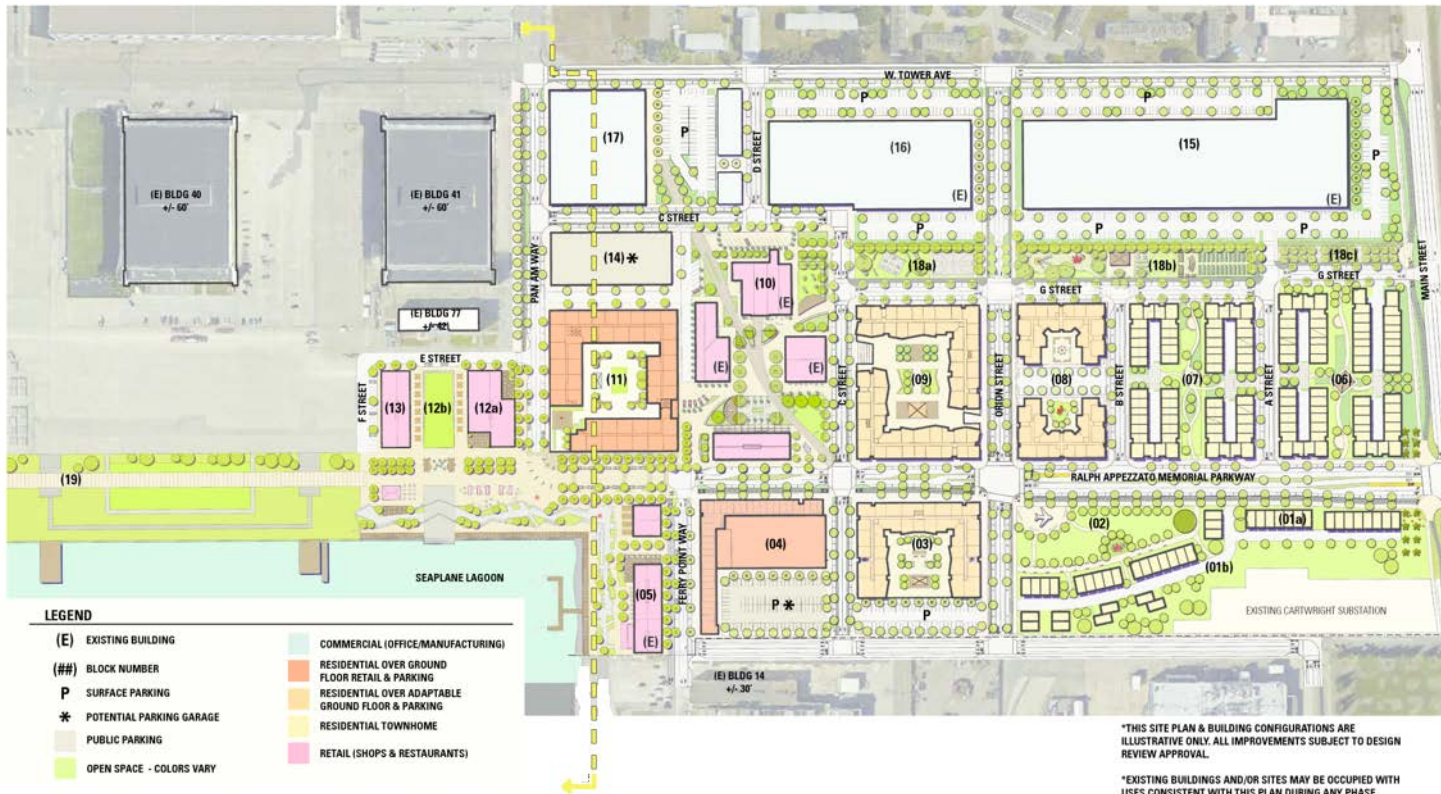
NEW LEGISLATION

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- Four new density bonus bills:
 - AB 2501 (Bloom)
 - AB 2556 (Nazarian)
 - AB 2442 (Holden)
 - AB 1934 (Santiago)

- Three new accessory unit bills:
 - SB 1069 (Wieckowski)
 - AB 2299 (Bloom)
 - AB 2406 (Thurmond)

MIXED USE – BASE REUSE PROJECT



*THIS SITE PLAN & BUILDING CONFIGURATIONS ARE ILLUSTRATIVE ONLY. ALL IMPROVEMENTS SUBJECT TO DESIGN REVIEW APPROVAL.

*EXISTING BUILDINGS AND/OR SITES MAY BE OCCUPIED WITH USES CONSISTENT WITH THIS PLAN DURING ANY PHASE

ILLUSTRATIVE SITE PLAN - ALL PHASES

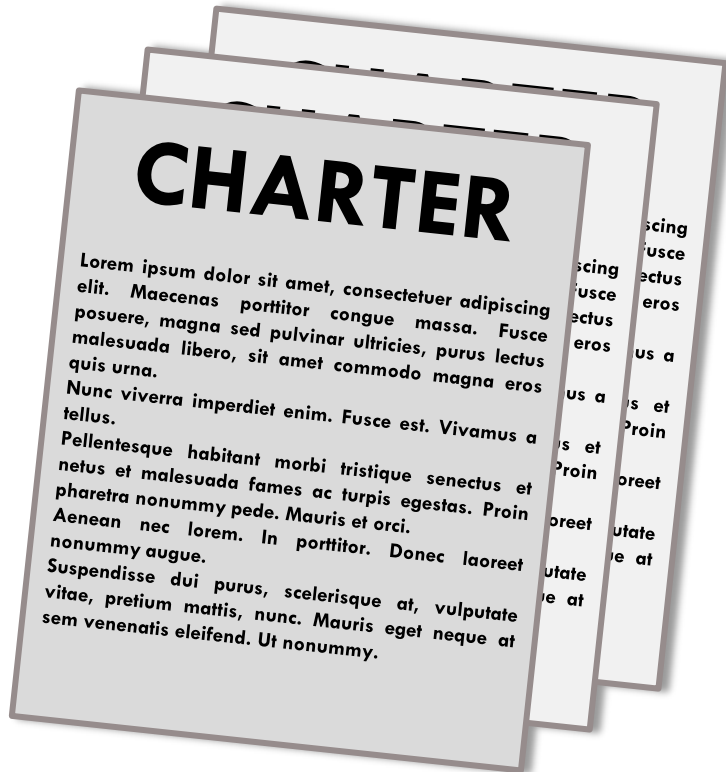
MIXED USE – BASE REUSE PROJECT

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- 800 residential units
- 200,000 square feet of retail space
- 400,000 square feet of adaptive reuse of existing buildings for retail/office uses
- Proposal included 200 affordable units
 - 48 very-low income units (6% of the total units)
 - 80 low income units (10% of the total units)
 - 72 moderate income units (9% of the total units)

MIXED USE - BASE REUSE PROJECT

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- City charter prohibits the development of multi-family residential units within the City
- General Plan and Precise Plan for development area prohibits single-family residential, requires high-density housing and mixed-use development for site

MIXED USE – BASED REUSE PROJECT

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- Developer requested a waiver under the density bonus statute and the City's ordinance to waive City Charter provision that prohibits the development of multi-family housing within the City

MIXED USE - BASE REUSE PROJECT

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- Waiver granted on the basis that:
 - ▣ The restriction on multi-family housing would preclude the development of the project at the densities envisioned in the General Plan and the Precise Plan for the area
 - ▣ Result in the reduction of the residential development to 271 residential units with a mixed-use development or 529 residential units if the development was solely residential
 - ▣ Waiver did not result in any adverse impacts since it was consistent with General Plan, the Precise Plan and the EIR prepared for those plans

PROJECT HEIGHT – WAIVER OR INCENTIVE?

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WAIVER V. INCENTIVE?

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- 17-unit project with 2 low income units; entitled to 20% density bonus (3.4 = 4 units), or 21 total
- Asked for additional story and height increase from 45 to 62 feet to accommodate fifth story and 11-foot ceiling heights

WAIVER ANALYSIS

- 4 stories could accommodate 17 units
- Additional 4 units about the same sq. ft. as those in 45-foot building, so seemed 5th story needed
- BUT: 4 stories had floor-to-floor height of 11.25 feet (45/4). Fifth story could be accommodated with additional 11.25 feet, or 56.25 feet – not 62 feet.

INCENTIVE ANALYSIS

- Developer argued for 11-foot ceilings (floor-to-floor height of 13 feet) to make up for cost of affordable units
- City's economist agreed but Council unconvinced
- Compromised at 58 feet (10-foot ceilings)

INCENTIVE ANALYSIS UNDER AB 2501

- Would 11-foot ceilings result in “identifiable and actual cost *reductions* to provide for affordable housing costs”?
- Would 11-foot ceilings increase costs, rather than reduce costs?
- What is a “cost reduction”?

VILLAGES PROJECT

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- 320 total units on approximately 15.4 acres
- 284 deed-restricted affordable rental units proposed

QUALIFIED FOR PARKING STANDARD MODIFICATION

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- Municipal Code requires at least 691 total spaces
 - ▣ 320 covered spaces
- Project proposed 693 total spaces
 - ▣ Only 101 covered spaces
- Reduced parking standards applied

INCENTIVE REGARDING VESTING TENTATIVE MAP

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- Project required subdivision under local ordinance and Subdivision Map Act
- Developer applied for phased vesting tentative map
 - ▣ Needed to provide certainty on entitlements while project proceeded with HUD approval process and secured other funding sources
 - ▣ Map intended to record in phases through 2021

INCENTIVE REGARDING VESTING TENTATIVE MAP

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- Municipal Code provides 24-month life for vesting tentative maps, with no option to apply for extensions
 - ▣ Extensions up to 6 years permitted for other forms of tentative map upon approval by local agency
- Developer requested concession that would permit it to apply for an extension for its vesting tentative map
 - ▣ Concession “required in order to provide for affordable housing costs” because financing commitments required land use certainty, but financing approval timeline uncertain