

# **The California Density Bonus Law (Government Code §§ 65915-65918)**

**January 24, 2017**

**Joint meeting of the Fairfax Town Council  
and Planning Commission**

# California policy approach to land use

- Police power is source of authority for all land use regulation
- Locus?
  - In CA, state generally sets *procedures*; local governments generally set *substance*
    - Example: Subdivision Map Act
  - Exceptions to this rule where state determines policy trumps local control
    - Example: Density bonus statute

# Density Bonus Law: Background

- California state law
  - Government Code §65915, et seq.
- Enacted 1979 to incentivize production of affordable housing
  - Mission creep:



Seniors



Foster  
Youth



Homeless



Disabled  
Veterans

# Local implementation

- General Plan directs us to implement density bonuses and adopt an ordinance
  - Housing Element Policy H-4.1.2
    - Housing Element Program H-4.1.2.1
- Task still on our work program
  - Lack of local ordinance ≠ inapplicable

# How it works

- Developers agree to produce qualifying project in exchange for:
  - Density bonus
  - Concessions/incentives
  - Waivers of development standards
  - Parking reductions (if conditions met)
- In exchange, town gets affordable housing (or other qualifying project) that is guaranteed to remain so for specified durations

# Qualifying project types

- Affordable housing
  - Very low
  - Low
  - Moderate
- Housing for specific populations
  - Transitional foster youth
  - Homeless
  - Disabled veterans
  - Seniors
- Land donation to support affordable housing
- Childcare facilities (added to qualifying project)

# Marin County Income Limits (FY2016)

	Public Housing, Section 8 & CDBG Programs			BMR Home Ownership Program	
<i>HH Size</i>	<i>Extremely Low</i>	<i>Very-Low</i>	<i>Low</i>	<i>Median</i>	<i>Moderate</i>
1	25,850	43,050	68,950	75,400	90,500
2	29,550	49,200	78,800	86,200	103,450
3	33,250	55,350	88,650	96,950	116,350
4	36,900	61,500	98,500	<b>107,700</b>	129,250
5	39,900	66,450	106,400	116,300	139,550
6	42,850	71,350	114,300	124,950	149,950
7	45,800	76,300	122,150	133,550	160,250
8	48,750	81,200	130,050	142,150	170,600
9	52,650	87,700	140,450	150,800	180,950

The “*Extremely Low*,” “*Very Low Income*” and “*Low Income*” schedules shown above were published by the U.S. Dept. of Housing and Urban Development (HUD), effective 3/28/16. The “*Median Income*” schedule shown above is based on the FY2016 median family income for the San Francisco HMFA of \$107,700 for a four-person household, issued by HUD effective 3/28/16, with adjustments for smaller and larger household sizes. The “*Moderate Income*” schedule shown above represents 120% of median income. For additional information, you may consult the HUD website at [www.huduser.org/datasets/il.html](http://www.huduser.org/datasets/il.html).

# How to qualify

Affordable Housing		
Very Low	Low	Moderate
<ul style="list-style-type: none"> <li>• Minimum 5% of units</li> <li>• Starts at 20% bonus + 2.5% per 1% increase in units)</li> <li>• Rental/ownership</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum 10% of units</li> <li>• Starts at 20% bonus + 1.5% increase)</li> <li>• Rental/ownership</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum 10% of units</li> <li>• Starts at 5% bonus + 1% increase</li> <li>• Ownership only</li> </ul>

**Housing for seniors**

- 100% restricted to seniors
- At least 35 units
- No affordability required
- Flat 20% density increase

**Housing for foster youth, disabled veterans, homeless**

- Minimum 10% of units
- Meet very low income affordability levels

**Land donation to develop affordable housing**

- Minimum 10% very low income (15% bonus, increases at 1:1)





# “Density bonus”

Means “density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density.”

# “Concessions” and “incentives”

**(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 ... 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 and actual cost reductions, to provide for affordable housing costs (as defined), or for rents for the targeted units to be set as specified in subdivision (c).

**(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 and actual cost reductions to provide for affordable housing costs, as defined in Health & Safety Code 50052.5, or for rents for the targeted units to be set as specified in subdivision (c).

# Sample concessions/incentives

- Setbacks
- Lot coverage
- Height
- Design review standards
- Fencing
- Lot width/depth/area
- Covered parking

# Calculating concessions/incentives

None	One	Two	Three
<ul style="list-style-type: none"> <li>• Senior housing</li> <li>• Land donation</li> </ul>	<ul style="list-style-type: none"> <li>• 5% very low</li> <li>• 10% low</li> <li>• 10% moderate</li> <li>• Condo conversion: 15% low or 33% moderate<sup>1</sup></li> <li>• Childcare facility<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• 10% very low</li> <li>• 20% low</li> <li>• 20% moderate</li> </ul>	<ul style="list-style-type: none"> <li>• 15% very low</li> <li>• 30% low</li> <li>• 30% moderate</li> </ul>

All percentages listed are minimum required to qualify.

<sup>1</sup> These categories may receive either one concession or a density bonus, but not both

# Reviewing requested concessions I

A town must grant a requested concession or incentive unless it finds that:

- The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in H&S Code 50052.5, or for rents for the targeted units to be set as required.
- The concession or incentive would have a ‘specific, adverse impact’ (as defined) 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-income and moderate-income households.
- The concession or incentive would be contrary to state or federal law.

# Reviewing requested concessions II

- A town is not required to grant a concession or incentive that would have either:
  - a ‘specific, adverse impact’ (as defined by law ), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
  - an adverse impact on any real property that is listed in the California Register of Historical Resources.
- These provisions do not require provision of direct financial incentives for housing development or the waiver of fees or dedication requirements

# Remedies

- The applicant may bring a lawsuit if a town 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.
  - The town would have the burden of proof for the denial of a requested concession or incentive if challenged in court.

# Waivers I

- Towns are prohibited from applying any development standard that would have the effect of physically precluding the construction of a development of qualifying project at (1) the increased densities allowed under the law, or (2) with the concessions or incentives permitted by the density bonus law.
- An applicant may submit a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a qualifying project at the densities or with the concessions or incentives permitted under the law.



# Waivers II

- This provision does not mandate that the town waive or reduce a standard if it would:
  - have a specific, adverse impact (as defined), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
  - have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
  - be contrary to state or federal law.
- Remedies: If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of the density bonus law, the court 'shall' award the plaintiff reasonable attorney's fees and costs of suit.

# Parking reductions

- Cost of parking = burden to development of affordable housing
- To combat this, density bonus law sets reduced parking ratios for qualifying projects
- In addition to other concessions, waivers, bonuses

# Parking ratios

General rule		
1 space	2 spaces	2.5 spaces
<ul style="list-style-type: none"> <li>• 0-1 bedroom</li> </ul>	<ul style="list-style-type: none"> <li>• 2-3 bedrooms</li> </ul>	<ul style="list-style-type: none"> <li>• 4 or more bedrooms</li> </ul>
Further reductions available for specific project types (exception to general rule)		
.5 spaces/bedroom	.3 spaces/unit	.5 spaces/unit
<ul style="list-style-type: none"> <li>• Maximum % of low (20%) or very low (11%) units</li> <li>• Unobstructed access to major transit stop</li> </ul>	<ul style="list-style-type: none"> <li>• Special needs development</li> <li>• Paratransit or unobstructed access to fixed bus route service (8x daily)</li> </ul>	<ul style="list-style-type: none"> <li>• Entirely rental units</li> <li>• Low income affordable</li> <li>• Either:               <ul style="list-style-type: none"> <li>• Within .5 mi of major transit stop and unobstructed access</li> <li>• Senior project (62+) with paratransit or unobstructed access to fixed bus route service (8x daily)</li> </ul> </li> </ul>

# Countering reduced parking ratios

- If the town has conducted an areawide or townwide parking study in the last 7 years, then the town can impose a higher vehicular parking ratio based upon substantial evidence found in the parking study, including, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals.
- Higher ratio still cannot exceed statutory maximums
- Findings would have to be made in approval
- Fairfax has not completed such a study to date

# Duration of affordability requirements

- 55 years for very low and low income rental units
  - Or longer if required by construction/mortgage financing assistance program, mortgage insurance program, or rental subsidy program
- First sale for ownership units
  - Equity sharing program required upon resale
    - Seller keeps value of improvements, down payment, and proportionate share of appreciation
    - Town gets:
      - Any initial subsidy (FMV at time of first sale minus initial sale price plus any down payment or mortgage assistance) plus
      - Proportionate share of appreciation (ratio of initial subsidy to FMV of home at initial sale)

# Avoiding loss of affordable units

- State policy to preserve existing affordable housing
- No density bonuses or concessions/incentives if project would cause loss of existing or recent affordable units without replacement
- Allowed if replaced

# Condominium conversions

- Special provisions for condo conversions
  - At least 33% moderate or 15% low income
- Receive either a density bonus (25% increase in units) or “other incentives of equivalent financial value”
- Ineligible for these provisions if project requires losing current or recent affordable units (low or very low) without replacing units

# Local ordinance

- List information required in application
  - Unit/bedroom count
  - Proximity to transit stops
  - Age restrictions
  - Affordability
  - Proof that concessions/incentives provide “identifiable and actual cost reductions”
  - Proof that any standard to be waived would “have effect physically precluding development” at permitted density
  - Financing requirements re duration of affordability restrictions
- Specify recorded agreements
- Basis of findings
- Preferred concessions/incentives
- Clarification of General Plan language vis-à-vis density bonus applications



# Housing Element Policy H-4.1.2

***Density Bonuses and Other Incentives for Lower-income Housing Developments.*** Support and expand the use of density bonuses, and other incentives, to help achieve housing goals while ensuring that potential impacts are considered and mitigated. Provide the following incentive options for developments containing a significant percentage of extremely low-, very low-, or low-income units on-site:

# Housing Element Policy H-4.1.2 (cont)

- ***State Bonus Law.*** Offer density bonuses consistent with the State Density Bonus Law (GC Section 65915 et seq.).
- ***Parking.*** Sites within 962.5 feet (300 meters) of a transit stop may be permitted a reduction in parking required by current code, and tandem parking or off-site parking alternatives will also be considered.
- ***Relationship of Density to Floor Area and Lot Coverage.*** Provide flexibility in applying development standards (e.g., parking, floor area, and setback), subject to the type of housing, size, and unit mix, location, and overall design. Additional density, beyond the maximum permitted, may be appropriate where units are significantly smaller and would have less impact than the market norm. For example, if the norm is 1,200 square feet of overall space for a two-bedroom unit, two units, 600 square feet each, may be permitted.
- ***Reduced Fees.*** Waive or reduce fees on a sliding scale related to the levels of affordability, such as a rebate of all planning and building fees for lower-income units based on the proportion of such units in the project.
- ***Coordination with Other Agencies.*** Coordinate with service providers and other agencies, as necessary, to create opportunities for the development to be built.
- ***Use of Housing Trusts.*** Use housing trust funds, as appropriate, to achieve greater affordability.

**Questions? Direction?**