



MEMORANDUM

TO: Planning Commission

FROM: Jeremy Tejirian, Planning Manager

DATE: November 11, 2020

RE: Development Code Amendments 2020

The first Planning Commission hearing on the 2020 Development Code amendments is scheduled for November 16th, and a staff report with attachments including the proposed amendments was previously distributed for review. Following up from that original distribution, Planning Division staff has received public comment and has found additional materials that may assist in your commission's review.

First, planning staff inadvertently attached Senate Bill 850, noting that it would become effective as of January 1, 2021. This was the wrong bill to attach and is not necessary to review. The bill that staff intended to attach was Assembly Bill 2345. The correct bill, showing track changes, is attached to this memorandum (attachment 1).

Further, we are attaching an explanation of the density bonus law prepared by the law firm of Meyers Nave (attachment 2). Please note that this paper was prepared before the passage of AB 2345 and does not address the most recent changes adopted into law.

The California Department of Housing and Community Development (HCD) prepared a handbook on ADUs, which may provide a helpful explanation of the State's current legislative framework, and is also attached (attachment 3).

In addition to reviewing these materials, Planning Division staff requests that your commission consider an additional alternative related to ADUs. This alternative consists of removing the following text from Development Code section 22.06.050.F:

“If a property owner is developing a new dwelling on a property and seeking to convert the existing dwelling on that property to an Accessory Dwelling Unit/Junior Accessory Dwelling Unit then this exemption does not apply to that conversion.”

Staff recommends that your commission review this amendment because this provision may be found inconsistent with State law, but no determination has yet been made.

Apart from this additional alternative, Planning Division staff does not recommend changes to the proposed amendments.

Attachments:

1. Assembly Bill 2345, with track changes
2. Meyers Nave paper regarding Density Bonus law
3. HCD ADU Handbook
4. Krystal comments, received 11-8-20

AMENDED IN SENATE AUGUST 25, 2020

AMENDED IN SENATE AUGUST 21, 2020

AMENDED IN SENATE JULY 21, 2020

AMENDED IN ASSEMBLY MAY 22, 2020

AMENDED IN ASSEMBLY MAY 11, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2345

Introduced by Assembly Members Gonzalez and Chiu

February 18, 2020

An act to amend Sections 65400 and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2345, as amended, Gonzalez. Planning and zoning: density bonuses: annual report: affordable housing.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the planning agency of a city or county to provide by April 1 of each year an annual report to, among other entities, the Department of Housing and Community Development that includes, among other specified information, the number of net new units of housing that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, as provided.

This bill would require that the annual report include specified information regarding density bonuses granted in accordance with specified law, as described below.

(2) Existing law, known as the Density Bonus Law, requires a city, county, or city and county to provide a developer that proposes a housing development within the jurisdictional boundaries of that city, county, or city and county with a density bonus and other incentives or concessions for the production of lower income housing units, or for the donation of land within the development, if the developer agrees to construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents and meets other requirements. Among other things, existing law requires a city, county, or city and county to provide a density bonus under these provisions if the developer agrees to construct a housing development in which 100% of the total units, exclusive of managers' units, are for lower income households, as defined, but authorizes a housing development that qualifies under these provisions to include up to 20% of the total units for moderate-income households, as defined. For purposes of determining the qualifying amount of units in a development for purposes of awarding a density bonus, existing law specifies that "total units" does not include units added by a density bonus.

This bill would revise the requirements for a housing development that includes 100% of units for lower income households to instead require that the development include 100% of all units in the development, including both total units, defined as described above, and density bonus units, but exclusive of managers' units, are for lower income households, as defined, except that the development may include up to 20% of those units for moderate-income households.

(3) Existing law provides for the calculation of the amount of density bonus for each type of housing development that qualifies under these provisions. Existing law specifies the number of incentives or concessions that an applicant can receive. Existing law requires that an applicant receive 2 incentives or concessions for projects that include at least 20% of the total units for lower income households, at least 10% for very low income households, or at least 20% for persons or families of moderate income in a common interest development. Existing law requires that an applicant receive 3 incentives or concessions for projects that include at least 30% of the total units for lower income households, at least 15% for very low income households, or at least

30% for persons or families of moderate income in a common interest development.

This bill, instead, would authorize an applicant to receive 2 incentives or concessions for projects that include at least 17% of the total units for lower income households, at least 10% of the total units for very low income households, or at least 20% for persons or families of moderate income in a common interest development. This bill would authorize an applicant to receive 3 incentives or concessions for projects that include at least 24% of the total units for lower income households, at least 15% of the total units for very low income households, or at least 30% for persons or families of moderate income in a common interest development.

(4) Existing law provides that a housing development that receives a waiver from any maximum controls on density, as specified, is not eligible for, and prohibits such a development from receiving, a waiver or reduction of development standards.

This bill, instead, would provide that a housing development that receives a waiver from any maximum controls on density, is only eligible for a specified waiver or reduction of development standards, unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(5) Existing law specifies that the density bonus, or the amount of the density increase over the otherwise allowable gross residential density, to which an applicant is entitled varies according to the amount by which the percentage of affordable housing units in a development exceeds a specified base percentage for units for lower income households, very low income households, senior citizens, persons and families of moderate income, transitional foster youth, or lower income students, as specified. Existing law authorizes a maximum density bonus of 35% for a housing development in which 20% or more of the total units are for lower income households. Existing law authorizes a maximum density bonus of 35% for a housing development in which 11% or more of the total units are for very low income households. Existing law authorizes a maximum density bonus of 35% for housing developments in which 40% or more of the total units are for persons and families of moderate income.

This bill would include a maximum density bonus for a housing development in which 16% of the total units are for lower income households and would increase the maximum density bonus, to up to 50%, for construction of a housing development in which a greater

percentage than that described above of total units are for lower income households, very low income households, and persons and families of moderate income, as specified.

(6) Existing law, for projects in which 100% of the units are for lower income households, as described above, prohibits a city, county, or city and county from imposing any maximum controls on density, and in addition to the above-described incentives or concessions, requires that the applicant receive a specified height increase, if the project is located within ½ mile of a major transit stop, as defined. Existing law also requires, among other criteria for a project to be eligible for various vehicular parking ratios under the Density Bonus Law, as described below, that the project be located within ½ mile of a major transit stop, as defined.

This bill, for purposes of determining whether a project is located within ½ mile of a major transit stop under the Density Bonus Law, would require that the measurement of the distance of a development from a transit stop be measured from any point on the property of the proposed development to any point on the property where the transit stop is located. The bill would also make technical changes with respect to the definition of “major transit stop” under the Density Bonus Law.

(7) Existing law prohibits, except as provided, upon the request of a developer, a city, county, or city and county from requiring a vehicular parking ratio for a development that qualifies for a density bonus that exceeds specified amounts of onsite parking per bedroom. Existing law also specifies the parking ratios applicable to a development that include a maximum percentage of low-income or very low income units, that is located within ½ mile of a transit stop, and that provides unobstructed access to the transit stop from the development.

This bill would decrease the maximum ratio of vehicular parking for developments with 2 to 3 bedrooms, as specified. This bill would define the term “natural or constructed impediments” for purposes of determining whether a development has unobstructed access to a transit stop. The bill would authorize a developer to request that a city, county, or city and county not impose vehicular parking standards if the development meets specified affordability requirements and either (A) provides unobstructed access to a major transit stop or (B) is a for-rent housing development for individuals who are 62 years of age or older that will have either paratransit service or unobstructed access to a fixed bus route, as specified.

(8) Existing law requires a city, county, or city and county to adopt an ordinance that specifies how it will implement the Density Bonus Law, but provides that failure to adopt an ordinance does not relieve a city, county, or city and county from complying with that law. Existing law also authorizes a city, county, or city and county, if permitted by local ordinance, to grant a density bonus greater than what is described in the Density Bonus Law or to grant a proportionately lower density bonus than what is required by the Density Bonus Law for developments that do not meet the requirements of that law.

This bill, notwithstanding any other law, would provide that a city, including a charter city, county, or city and county that has adopted an ordinance or a housing program, or both an ordinance and a housing program, that incentivizes the development of affordable housing that allows for density bonuses that exceed the density bonuses required by the Density Bonus Law effective through December 31, 2020, is not required to amend or otherwise update its ordinance or housing program to comply with the amendments made by this bill and is exempt from complying with the incentive and concession calculation amended by this bill, as provided.

(9) This bill would incorporate additional changes to Section 65400 of the Government Code proposed by AB 168 and SB 1085 to be operative only if this bill and either or both AB 168 and SB 1085 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 65915 of the Government Code proposed by SB 1085 to be operative only if this bill and SB 1085 are enacted and this bill is enacted last.

~~(9)~~

(10) By adding to the duties of local planning officials with respect to preparing and submitting the above-described annual report to the Department of Housing and Community Development and awarding density bonuses, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 65400 of the Government Code, is
2 amended to read:

3 65400. (a) After the legislative body has adopted all or part
4 of a general plan, the planning agency shall do both of the
5 following:

6 (1) Investigate and make recommendations to the legislative
7 body regarding reasonable and practical means for implementing
8 the general plan or element of the general plan, so that it will serve
9 as an effective guide for orderly growth and development,
10 preservation and conservation of open-space land and natural
11 resources, and the efficient expenditure of public funds relating to
12 the subjects addressed in the general plan.

13 (2) Provide by April 1 of each year an annual report to the
14 legislative body, the Office of Planning and Research, and the
15 Department of Housing and Community Development that includes
16 all of the following:

17 (A) The status of the plan and progress in its implementation.

18 (B) (i) The progress in meeting its share of regional housing
19 needs determined pursuant to Section 65584 and local efforts to
20 remove governmental constraints to the maintenance, improvement,
21 and development of housing pursuant to paragraph (3) of
22 subdivision (c) of Section 65583.

23 (ii) The housing element portion of the annual report, as required
24 by this paragraph, shall be prepared through the use of standards,
25 forms, and definitions adopted by the Department of Housing and
26 Community Development. The department may review, adopt,
27 amend, and repeal the standards, forms, or definitions, to
28 implement this article. Any standards, forms, or definitions adopted
29 to implement this article shall not be subject to Chapter 3.5
30 (commencing with Section 11340) of Part 1 of Division 3 of Title
31 2. Before and after adoption of the forms, the housing element
32 portion of the annual report shall include a section that describes
33 the actions taken by the local government towards completion of
34 the programs and status of the local government's compliance with
35 the deadlines in its housing element. That report shall be considered
36 at an annual public meeting before the legislative body where
37 members of the public shall be allowed to provide oral testimony
38 and written comments.

1 (iii) The report may include the number of units that have been
2 completed pursuant to subdivision (c) of Section 65583.1. For
3 purposes of this paragraph, committed assistance may be executed
4 throughout the planning period, and the program under paragraph
5 (1) of subdivision (c) of Section 65583.1 shall not be required.
6 The report shall document how the units meet the standards set
7 forth in that subdivision.

8 (C) The number of housing development applications received
9 in the prior year.

10 (D) The number of units included in all development
11 applications in the prior year.

12 (E) The number of units approved and disapproved in the prior
13 year.

14 (F) The degree to which its approved general plan complies
15 with the guidelines developed and adopted pursuant to Section
16 65040.2 and the date of the last revision to the general plan.

17 (G) A listing of sites rezoned to accommodate that portion of
18 the city's or county's share of the regional housing need for each
19 income level that could not be accommodated on sites identified
20 in the inventory required by paragraph (1) of subdivision (c) of
21 Section 65583 and Section 65584.09. The listing of sites shall also
22 include any additional sites that may have been required to be
23 identified by Section 65863.

24 (H) The number of net new units of housing, including both
25 rental housing and for-sale housing and any units that the County
26 of Napa or the City of Napa may report pursuant to an agreement
27 entered into pursuant to Section 65584.08, that have been issued
28 a completed entitlement, a building permit, or a certificate of
29 occupancy, thus far in the housing element cycle, and the income
30 category, by area median income category, that each unit of
31 housing satisfies. That production report shall, for each income
32 category described in this subparagraph, distinguish between the
33 number of rental housing units and the number of for-sale units
34 that satisfy each income category. The production report shall
35 include, for each entitlement, building permit, or certificate of
36 occupancy, a unique site identifier that must include the assessor's
37 parcel number, but may include street address, or other identifiers.

38 (I) The number of applications submitted pursuant to subdivision
39 (a) of Section 65913.4, the location and the total number of
40 developments approved pursuant to subdivision (b) of Section

1 65913.4, the total number of building permits issued pursuant to
2 subdivision (b) of Section 65913.4, the total number of units
3 including both rental housing and for-sale housing by area median
4 income category constructed using the process provided for in
5 subdivision (b) of Section 65913.4.

6 (J) If the city or county has received funding pursuant to the
7 Local Government Planning Support Grants Program (Chapter 3.1
8 (commencing with Section 50515) of Part 2 of Division 31 of the
9 Health and Safety Code), the information required pursuant to
10 subdivision (a) of Section 50515.04 of the Health and Safety Code.

11 (K) The following information with respect to density bonuses
12 granted in accordance with Section 65915:

13 (i) The number of density bonus applications received by the
14 city or county.

15 (ii) The number of density bonus applications approved by the
16 city or county.

17 (iii) Data from a sample of projects, selected by the planning
18 agency, approved to receive a density bonus from the city or
19 county, including, but not limited to, the percentage of density
20 bonus received, the percentage of affordable units in the project,
21 the number of other incentives or concessions granted to the
22 project, and any waiver or reduction of parking standards for the
23 project.

24 (L) The Department of Housing and Community Development
25 shall post a report submitted pursuant to this paragraph on its
26 internet website within a reasonable time of receiving the report.

27 (b) If a court finds, upon a motion to that effect, that a city,
28 county, or city and county failed to submit, within 60 days of the
29 deadline established in this section, the housing element portion
30 of the report required pursuant to subparagraph (B) of paragraph
31 (2) of subdivision (a) that substantially complies with the
32 requirements of this section, the court shall issue an order or
33 judgment compelling compliance with this section within 60 days.
34 If the city, county, or city and county fails to comply with the
35 court's order within 60 days, the plaintiff or petitioner may move
36 for sanctions, and the court may, upon that motion, grant
37 appropriate sanctions. The court shall retain jurisdiction to ensure
38 that its order or judgment is carried out. If the court determines
39 that its order or judgment is not carried out within 60 days, the
40 court may issue further orders as provided by law to ensure that

1 the purposes and policies of this section are fulfilled. This
2 subdivision applies to proceedings initiated on or after the first
3 day of October following the adoption of forms and definitions by
4 the Department of Housing and Community Development pursuant
5 to paragraph (2) of subdivision (a), but no sooner than six months
6 following that adoption.

7 *SEC. 1.3. Section 65400 of the Government Code is amended*
8 *to read:*

9 65400. (a) After the legislative body has adopted all or part
10 of a general plan, the planning agency shall do both of the
11 following:

12 (1) Investigate and make recommendations to the legislative
13 body regarding reasonable and practical means for implementing
14 the general plan or element of the general plan, so that it will serve
15 as an effective guide for orderly growth and development,
16 preservation and conservation of open-space land and natural
17 resources, and the efficient expenditure of public funds relating to
18 the subjects addressed in the general plan.

19 (2) Provide by April 1 of each year an annual report to the
20 legislative body, the Office of Planning and Research, and the
21 Department of Housing and Community Development that includes
22 all of the following:

23 (A) The status of the plan and progress in its implementation.

24 (B) (i) The progress in meeting its share of regional housing
25 needs determined pursuant to Section 65584 and local efforts to
26 remove governmental constraints to the maintenance, improvement,
27 and development of housing pursuant to paragraph (3) of
28 subdivision (c) of Section 65583.

29 (ii) The housing element portion of the annual report, as required
30 by this paragraph, shall be prepared through the use of standards,
31 forms, and definitions adopted by the Department of Housing and
32 Community Development. The department may review, adopt,
33 amend, and repeal the standards, forms, or definitions, to
34 implement this article. Any standards, forms, or definitions adopted
35 to implement this article shall not be subject to Chapter 3.5
36 (commencing with Section 11340) of Part 1 of Division 3 of Title
37 2. Before and after adoption of the forms, the housing element
38 portion of the annual report shall include a section that describes
39 the actions taken by the local government towards completion of
40 the programs and status of the local government's compliance with

1 the deadlines in its housing element. That report shall be considered
2 at an annual public meeting before the legislative body where
3 members of the public shall be allowed to provide oral testimony
4 and written comments.

5 (iii) The report may include the number of units that have been
6 completed pursuant to subdivision (c) of Section 65583.1. For
7 purposes of this paragraph, committed assistance may be executed
8 throughout the planning period, and the program under paragraph
9 (1) of subdivision (c) of Section 65583.1 shall not be required.
10 The report shall document how the units meet the standards set
11 forth in that subdivision.

12 (C) The number of housing development applications received
13 in the prior year.

14 (D) The number of units included in all development
15 applications in the prior year.

16 (E) The number of units approved and disapproved in the prior
17 year.

18 (F) The degree to which its approved general plan complies
19 with the guidelines developed and adopted pursuant to Section
20 65040.2 and the date of the last revision to the general plan.

21 (G) A listing of sites rezoned to accommodate that portion of
22 the city's or county's share of the regional housing need for each
23 income level that could not be accommodated on sites identified
24 in the inventory required by paragraph (1) of subdivision (c) of
25 Section 65583 and Section 65584.09. The listing of sites shall also
26 include any additional sites that may have been required to be
27 identified by Section 65863.

28 (H) The number of net new units of housing, including both
29 rental housing and for-sale housing and any units that the County
30 of Napa or the City of Napa may report pursuant to an agreement
31 entered into pursuant to Section 65584.08, that have been issued
32 a completed entitlement, a building permit, or a certificate of
33 occupancy, thus far in the housing element cycle, and the income
34 category, by area median income category, that each unit of
35 housing satisfies. That production report shall, for each income
36 category described in this subparagraph, distinguish between the
37 number of rental housing units and the number of for-sale units
38 that satisfy each income category. The production report shall
39 include, for each entitlement, building permit, or certificate of

1 occupancy, a unique site identifier that must include the assessor's
2 parcel number, but may include street address, or other identifiers.

3 (I) The number of applications submitted pursuant to subdivision
4 (a) of Section 65913.4, the location and the total number of
5 developments approved pursuant to subdivision ~~(b)~~ (c) of Section
6 65913.4, the total number of building permits issued pursuant to
7 subdivision ~~(b)~~ (c) of Section 65913.4, the total number of units
8 including both rental housing and for-sale housing by area median
9 income category constructed using the process provided for in
10 subdivision ~~(b)~~ (c) of Section 65913.4.

11 (J) If the city or county has received funding pursuant to the
12 Local Government Planning Support Grants Program (Chapter 3.1
13 (commencing with Section 50515) of Part 2 of Division 31 of the
14 Health and Safety Code), the information required pursuant to
15 subdivision (a) of Section 50515.04 of the Health and Safety Code.

16 (K) *The progress of the city or county in adopting or amending
17 its general plan or local open-space element in compliance with
18 its obligations to consult with California Native American tribes,
19 and to identify and protect, preserve, and mitigate impacts to
20 places, features, and objects described in Sections 5097.9 and
21 5097.993 of the Public Resources Code, pursuant to Chapter 905
22 of the Statutes of 2004.*

23 (L) *The following information with respect to density bonuses
24 granted in accordance with Section 65915:*

25 (i) *The number of density bonus applications received by the
26 city or county.*

27 (ii) *The number of density bonus applications approved by the
28 city or county.*

29 (iii) *Data from a sample of projects, selected by the planning
30 agency, approved to receive a density bonus from the city or
31 county, including, but not limited to, the percentage of density
32 bonus received, the percentage of affordable units in the project,
33 the number of other incentives or concessions granted to the
34 project, and any waiver or reduction of parking standards for the
35 project.*

36 ~~(K)~~

37 (M) The Department of Housing and Community Development
38 shall post a report submitted pursuant to this paragraph on its
39 internet website within a reasonable time of receiving the report.

1 (b) If a court finds, upon a motion to that effect, that a city,
2 county, or city and county failed to submit, within 60 days of the
3 deadline established in this section, the housing element portion
4 of the report required pursuant to subparagraph (B) of paragraph
5 (2) of subdivision (a) that substantially complies with the
6 requirements of this section, the court shall issue an order or
7 judgment compelling compliance with this section within 60 days.
8 If the city, county, or city and county fails to comply with the
9 court's order within 60 days, the plaintiff or petitioner may move
10 for sanctions, and the court may, upon that motion, grant
11 appropriate sanctions. The court shall retain jurisdiction to ensure
12 that its order or judgment is carried out. If the court determines
13 that its order or judgment is not carried out within 60 days, the
14 court may issue further orders as provided by law to ensure that
15 the purposes and policies of this section are fulfilled. This
16 subdivision applies to proceedings initiated on or after the first
17 day of October following the adoption of forms and definitions by
18 the Department of Housing and Community Development pursuant
19 to paragraph (2) of subdivision (a), but no sooner than six months
20 following that adoption.

21 *SEC. 1.5. Section 65400 of the Government Code is amended*
22 *to read:*

23 65400. (a) After the legislative body has adopted all or part
24 of a general plan, the planning agency shall do both of the
25 following:

26 (1) Investigate and make recommendations to the legislative
27 body regarding reasonable and practical means for implementing
28 the general plan or element of the general plan, so that it will serve
29 as an effective guide for orderly growth and development,
30 preservation and conservation of open-space land and natural
31 resources, and the efficient expenditure of public funds relating to
32 the subjects addressed in the general plan.

33 (2) Provide by April 1 of each year an annual report to the
34 legislative body, the Office of Planning and Research, and the
35 Department of Housing and Community Development that includes
36 all of the following:

37 (A) The status of the plan and progress in its implementation.

38 (B) (i) The progress in meeting its share of regional housing
39 needs determined pursuant to Section 65584 and local efforts to
40 remove governmental constraints to the maintenance, improvement,

1 and development of housing pursuant to paragraph (3) of
2 subdivision (c) of Section 65583.

3 (ii) The housing element portion of the annual report, as required
4 by this paragraph, shall be prepared through the use of standards,
5 forms, and definitions adopted by the Department of Housing and
6 Community Development. The department may review, adopt,
7 amend, and repeal the standards, forms, or definitions, to
8 implement this article. Any standards, forms, or definitions adopted
9 to implement this article shall not be subject to Chapter 3.5
10 (commencing with Section 11340) of Part 1 of Division 3 of Title
11 2. Before and after adoption of the forms, the housing element
12 portion of the annual report shall include a section that describes
13 the actions taken by the local government towards completion of
14 the programs and status of the local government's compliance with
15 the deadlines in its housing element. That report shall be considered
16 at an annual public meeting before the legislative body where
17 members of the public shall be allowed to provide oral testimony
18 and written comments.

19 (iii) The report may include the number of units that have been
20 completed pursuant to subdivision (c) of Section 65583.1. For
21 purposes of this paragraph, committed assistance may be executed
22 throughout the planning period, and the program under paragraph
23 (1) of subdivision (c) of Section 65583.1 shall not be required.
24 The report shall document how the units meet the standards set
25 forth in that subdivision.

26 (iv) *The planning agency shall include the number of units in*
27 *a student housing development for lower income students for which*
28 *the developer of the student housing development was granted a*
29 *density bonus pursuant to subparagraph (F) of paragraph (1) of*
30 *subdivision (b) of Section 65915.*

31 (C) The number of housing development applications received
32 in the prior year.

33 (D) The number of units included in all development
34 applications in the prior year.

35 (E) The number of units approved and disapproved in the prior
36 year.

37 (F) The degree to which its approved general plan complies
38 with the guidelines developed and adopted pursuant to Section
39 65040.2 and the date of the last revision to the general plan.

1 (G) A listing of sites rezoned to accommodate that portion of
2 the city's or county's share of the regional housing need for each
3 income level that could not be accommodated on sites identified
4 in the inventory required by paragraph (1) of subdivision (c) of
5 Section 65583 and Section 65584.09. The listing of sites shall also
6 include any additional sites that may have been required to be
7 identified by Section 65863.

8 (H) The number of net new units of housing, including both
9 rental housing and for-sale housing and any units that the County
10 of Napa or the City of Napa may report pursuant to an agreement
11 entered into pursuant to Section 65584.08, that have been issued
12 a completed entitlement, a building permit, or a certificate of
13 occupancy, thus far in the housing element cycle, and the income
14 category, by area median income category, that each unit of
15 housing satisfies. That production report shall, for each income
16 category described in this subparagraph, distinguish between the
17 number of rental housing units and the number of for-sale units
18 that satisfy each income category. The production report shall
19 include, for each entitlement, building permit, or certificate of
20 occupancy, a unique site identifier that must include the assessor's
21 parcel number, but may include street address, or other identifiers.

22 (I) The number of applications submitted pursuant to subdivision
23 (a) of Section 65913.4, the location and the total number of
24 developments approved pursuant to subdivision (b) of Section
25 65913.4, the total number of building permits issued pursuant to
26 subdivision (b) of Section 65913.4, the total number of units
27 including both rental housing and for-sale housing by area median
28 income category constructed using the process provided for in
29 subdivision (b) of Section 65913.4.

30 (J) If the city or county has received funding pursuant to the
31 Local Government Planning Support Grants Program (Chapter 3.1
32 (commencing with Section 50515) of Part 2 of Division 31 of the
33 Health and Safety Code), the information required pursuant to
34 subdivision (a) of Section 50515.04 of the Health and Safety Code.

35 ~~(K) The Department of Housing and Community Development~~
36 ~~shall post a report submitted pursuant to this paragraph on its~~
37 ~~internet website within a reasonable time of receiving the report.~~

38 (K) *The following information with respect to density bonuses*
39 *granted in accordance with Section 65915:*

1 (i) *The number of density bonus applications received by the*
2 *city or county.*

3 (ii) *The number of density bonus applications approved by the*
4 *city or county.*

5 (iii) *Data from a sample of projects, selected by the planning*
6 *agency, approved to receive a density bonus from the city or*
7 *county, including, but not limited to, the percentage of density*
8 *bonus received, the percentage of affordable units in the project,*
9 *the number of other incentives or concessions granted to the*
10 *project, and any waiver or reduction of parking standards for the*
11 *project.*

12 (b) If a court finds, upon a motion to that effect, that a city,
13 county, or city and county failed to submit, within 60 days of the
14 deadline established in this section, the housing element portion
15 of the report required pursuant to subparagraph (B) of paragraph
16 (2) of subdivision (a) that substantially complies with the
17 requirements of this section, the court shall issue an order or
18 judgment compelling compliance with this section within 60 days.
19 If the city, county, or city and county fails to comply with the
20 court's order within 60 days, the plaintiff or petitioner may move
21 for sanctions, and the court may, upon that motion, grant
22 appropriate sanctions. The court shall retain jurisdiction to ensure
23 that its order or judgment is carried out. If the court determines
24 that its order or judgment is not carried out within 60 days, the
25 court may issue further orders as provided by law to ensure that
26 the purposes and policies of this section are fulfilled. This
27 subdivision applies to proceedings initiated on or after the first
28 day of October following the adoption of forms and definitions by
29 the Department of Housing and Community Development pursuant
30 to paragraph (2) of subdivision (a), but no sooner than six months
31 following that adoption.

32 (c) *The Department of Housing and Community Development*
33 *shall post a report submitted pursuant to this section on its internet*
34 *website within a reasonable time of receiving the report.*

35 *SEC. 1.7. Section 65400 of the Government Code is amended*
36 *to read:*

37 65400. (a) After the legislative body has adopted all or part
38 of a general plan, the planning agency shall do both of the
39 following:

1 (1) Investigate and make recommendations to the legislative
2 body regarding reasonable and practical means for implementing
3 the general plan or element of the general plan, so that it will serve
4 as an effective guide for orderly growth and development,
5 preservation and conservation of open-space land and natural
6 resources, and the efficient expenditure of public funds relating to
7 the subjects addressed in the general plan.

8 (2) Provide by April 1 of each year an annual report to the
9 legislative body, the Office of Planning and Research, and the
10 Department of Housing and Community Development that includes
11 all of the following:

12 (A) The status of the plan and progress in its implementation.

13 (B) (i) The progress in meeting its share of regional housing
14 needs determined pursuant to Section 65584 and local efforts to
15 remove governmental constraints to the maintenance, improvement,
16 and development of housing pursuant to paragraph (3) of
17 subdivision (c) of Section 65583.

18 (ii) The housing element portion of the annual report, as required
19 by this paragraph, shall be prepared through the use of standards,
20 forms, and definitions adopted by the Department of Housing and
21 Community Development. The department may review, adopt,
22 amend, and repeal the standards, forms, or definitions, to
23 implement this article. Any standards, forms, or definitions adopted
24 to implement this article shall not be subject to Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3 of Title
26 2. Before and after adoption of the forms, the housing element
27 portion of the annual report shall include a section that describes
28 the actions taken by the local government towards completion of
29 the programs and status of the local government's compliance with
30 the deadlines in its housing element. That report shall be considered
31 at an annual public meeting before the legislative body where
32 members of the public shall be allowed to provide oral testimony
33 and written comments.

34 (iii) The report may include the number of units that have been
35 completed pursuant to subdivision (c) of Section 65583.1. For
36 purposes of this paragraph, committed assistance may be executed
37 throughout the planning period, and the program under paragraph
38 (1) of subdivision (c) of Section 65583.1 shall not be required.
39 The report shall document how the units meet the standards set
40 forth in that subdivision.

1 (iv) *The planning agency shall include the number of units in*
2 *a student housing development for lower income students for which*
3 *the developer of the student housing development was granted a*
4 *density bonus pursuant to subparagraph (F) of paragraph (1) of*
5 *subdivision (b) of Section 65915.*

6 (C) The number of housing development applications received
7 in the prior year.

8 (D) The number of units included in all development
9 applications in the prior year.

10 (E) The number of units approved and disapproved in the prior
11 year.

12 (F) The degree to which its approved general plan complies
13 with the guidelines developed and adopted pursuant to Section
14 65040.2 and the date of the last revision to the general plan.

15 (G) A listing of sites rezoned to accommodate that portion of
16 the city's or county's share of the regional housing need for each
17 income level that could not be accommodated on sites identified
18 in the inventory required by paragraph (1) of subdivision (c) of
19 Section 65583 and Section 65584.09. The listing of sites shall also
20 include any additional sites that may have been required to be
21 identified by Section 65863.

22 (H) The number of net new units of housing, including both
23 rental housing and for-sale housing and any units that the County
24 of Napa or the City of Napa may report pursuant to an agreement
25 entered into pursuant to Section 65584.08, that have been issued
26 a completed entitlement, a building permit, or a certificate of
27 occupancy, thus far in the housing element cycle, and the income
28 category, by area median income category, that each unit of
29 housing satisfies. That production report shall, for each income
30 category described in this subparagraph, distinguish between the
31 number of rental housing units and the number of for-sale units
32 that satisfy each income category. The production report shall
33 include, for each entitlement, building permit, or certificate of
34 occupancy, a unique site identifier that must include the assessor's
35 parcel number, but may include street address, or other identifiers.

36 (I) The number of applications submitted pursuant to subdivision
37 (a) of Section 65913.4, the location and the total number of
38 developments approved pursuant to subdivision-~~(b)~~ (c) of Section
39 65913.4, the total number of building permits issued pursuant to
40 subdivision-~~(b)~~ (c) of Section 65913.4, the total number of units

1 including both rental housing and for-sale housing by area median
 2 income category constructed using the process provided for in
 3 subdivision ~~(b)~~ (c) of Section 65913.4.

4 (J) If the city or county has received funding pursuant to the
 5 Local Government Planning Support Grants Program (Chapter 3.1
 6 (commencing with Section 50515) of Part 2 of Division 31 of the
 7 Health and Safety Code), the information required pursuant to
 8 subdivision (a) of Section 50515.04 of the Health and Safety Code.

9 ~~(K) The Department of Housing and Community Development~~
 10 ~~shall post a report submitted pursuant to this paragraph on its~~
 11 ~~internet website within a reasonable time of receiving the report.~~

12 (K) *The progress of the city or county in adopting or amending*
 13 *its general plan or local open-space element in compliance with*
 14 *its obligations to consult with California Native American tribes,*
 15 *and to identify and protect, preserve, and mitigate impacts to*
 16 *places, features, and objects described in Sections 5097.9 and*
 17 *5097.993 of the Public Resources Code, pursuant to Chapter 905*
 18 *of the Statutes of 2004.*

19 (L) *The following information with respect to density bonuses*
 20 *granted in accordance with Section 65915:*

21 (i) *The number of density bonus applications received by the*
 22 *city or county.*

23 (ii) *The number of density bonus applications approved by the*
 24 *city or county.*

25 (iii) *Data from a sample of projects, selected by the planning*
 26 *agency, approved to receive a density bonus from the city or*
 27 *county, including, but not limited to, the percentage of density*
 28 *bonus received, the percentage of affordable units in the project,*
 29 *the number of other incentives or concessions granted to the*
 30 *project, and any waiver or reduction of parking standards for the*
 31 *project.*

32 (b) If a court finds, upon a motion to that effect, that a city,
 33 county, or city and county failed to submit, within 60 days of the
 34 deadline established in this section, the housing element portion
 35 of the report required pursuant to subparagraph (B) of paragraph
 36 (2) of subdivision (a) that substantially complies with the
 37 requirements of this section, the court shall issue an order or
 38 judgment compelling compliance with this section within 60 days.
 39 If the city, county, or city and county fails to comply with the
 40 court's order within 60 days, the plaintiff or petitioner may move

1 for sanctions, and the court may, upon that motion, grant
2 appropriate sanctions. The court shall retain jurisdiction to ensure
3 that its order or judgment is carried out. If the court determines
4 that its order or judgment is not carried out within 60 days, the
5 court may issue further orders as provided by law to ensure that
6 the purposes and policies of this section are fulfilled. This
7 subdivision applies to proceedings initiated on or after the first
8 day of October following the adoption of forms and definitions by
9 the Department of Housing and Community Development pursuant
10 to paragraph (2) of subdivision (a), but no sooner than six months
11 following that adoption.

12 *(c) The Department of Housing and Community Development*
13 *shall post a report submitted pursuant to this section on its internet*
14 *website within a reasonable time of receiving the report.*

15 SEC. 2. Section 65915 of the Government Code is amended
16 to read:

17 65915. (a) (1) When an applicant seeks a density bonus for
18 a housing development within, or for the donation of land for
19 housing within, the jurisdiction of a city, county, or city and county,
20 that local government shall comply with this section. A city,
21 county, or city and county shall adopt an ordinance that specifies
22 how compliance with this section will be implemented. Except as
23 otherwise provided in subdivision (s), failure to adopt an ordinance
24 shall not relieve a city, county, or city and county from complying
25 with this section.

26 (2) A local government shall not condition the submission,
27 review, or approval of an application pursuant to this chapter on
28 the preparation of an additional report or study that is not otherwise
29 required by state law, including this section. This subdivision does
30 not prohibit a local government from requiring an applicant to
31 provide reasonable documentation to establish eligibility for a
32 requested density bonus, incentives or concessions, as described
33 in subdivision (d), waivers or reductions of development standards,
34 as described in subdivision (e), and parking ratios, as described in
35 subdivision (p).

36 (3) In order to provide for the expeditious processing of a density
37 bonus application, the local government shall do all of the
38 following:

39 (A) Adopt procedures and timelines for processing a density
40 bonus application.

1 (B) Provide a list of all documents and information required to
2 be submitted with the density bonus application in order for the
3 density bonus application to be deemed complete. This list shall
4 be consistent with this chapter.

5 (C) Notify the applicant for a density bonus whether the
6 application is complete in a manner consistent with the timelines
7 specified in Section 65943.

8 (D) (i) If the local government notifies the applicant that the
9 application is deemed complete pursuant to subparagraph (C),
10 provide the applicant with a determination as to the following
11 matters:

12 (I) The amount of density bonus, calculated pursuant to
13 subdivision (f), for which the applicant is eligible.

14 (II) If the applicant requests a parking ratio pursuant to
15 subdivision (p), the parking ratio for which the applicant is eligible.

16 (III) If the applicant requests incentives or concessions pursuant
17 to subdivision (d) or waivers or reductions of development
18 standards pursuant to subdivision (e), whether the applicant has
19 provided adequate information for the local government to make
20 a determination as to those incentives, concessions, or waivers or
21 reductions of development standards.

22 (ii) Any determination required by this subparagraph shall be
23 based on the development project at the time the application is
24 deemed complete. The local government shall adjust the amount
25 of density bonus and parking ratios awarded pursuant to this section
26 based on any changes to the project during the course of
27 development.

28 (b) (1) A city, county, or city and county shall grant one density
29 bonus, the amount of which shall be as specified in subdivision
30 (f), and, if requested by the applicant and consistent with the
31 applicable requirements of this section, incentives or concessions,
32 as described in subdivision (d), waivers or reductions of
33 development standards, as described in subdivision (e), and parking
34 ratios, as described in subdivision (p), when an applicant for a
35 housing development seeks and agrees to construct a housing
36 development, excluding any units permitted by the density bonus
37 awarded pursuant to this section, that will contain at least any one
38 of the following:

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

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

7 (C) A senior citizen housing development, as defined in Sections
8 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
9 residency based on age requirements for housing for older persons
10 pursuant to Section 798.76 or 799.5 of the Civil Code.

11 (D) Ten percent of the total dwelling units in a common interest
12 development, as defined in Section 4100 of the Civil Code, for
13 persons and families of moderate income, as defined in Section
14 50093 of the Health and Safety Code, provided that all units in the
15 development are offered to the public for purchase.

16 (E) Ten percent of the total units of a housing development for
17 transitional foster youth, as defined in Section 66025.9 of the
18 Education Code, disabled veterans, as defined in Section 18541,
19 or homeless persons, as defined in the federal McKinney-Vento
20 Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units
21 described in this subparagraph shall be subject to a recorded
22 affordability restriction of 55 years and shall be provided at the
23 same affordability level as very low income units.

24 (F) (i) Twenty percent of the total units for lower income
25 students in a student housing development that meets the following
26 requirements:

27 (I) All units in the student housing development will be used
28 exclusively for undergraduate, graduate, or professional students
29 enrolled full time at an institution of higher education accredited
30 by the Western Association of Schools and Colleges or the
31 Accrediting Commission for Community and Junior Colleges. In
32 order to be eligible under this subclause, the developer shall, as a
33 condition of receiving a certificate of occupancy, provide evidence
34 to the city, county, or city and county that the developer has entered
35 into an operating agreement or master lease with one or more
36 institutions of higher education for the institution or institutions
37 to occupy all units of the student housing development with
38 students from that institution or institutions. An operating
39 agreement or master lease entered into pursuant to this subclause
40 is not violated or breached if, in any subsequent year, there are not

1 sufficient students enrolled in an institution of higher education
2 to fill all units in the student housing development.

3 (II) The applicable 20-percent units will be used for lower
4 income students. For purposes of this clause, “lower income
5 students” means students who have a household income and asset
6 level that does not exceed the level for Cal Grant A or Cal Grant
7 B award recipients as set forth in paragraph (1) of subdivision (k)
8 of Section 69432.7 of the Education Code. The eligibility of a
9 student under this clause shall be verified by an affidavit, award
10 letter, or letter of eligibility provided by the institution of higher
11 education that the student is enrolled in, as described in subclause
12 (I), or by the California Student Aid Commission that the student
13 receives or is eligible for financial aid, including an institutional
14 grant or fee waiver, from the college or university, the California
15 Student Aid Commission, or the federal government shall be
16 sufficient to satisfy this subclause.

17 (III) The rent provided in the applicable units of the development
18 for lower income students shall be calculated at 30 percent of 65
19 percent of the area median income for a single-room occupancy
20 unit type.

21 (IV) The development will provide priority for the applicable
22 affordable units for lower income students experiencing
23 homelessness. A homeless service provider, as defined in paragraph
24 (3) of subdivision (e) of Section 103577 of the Health and Safety
25 Code, or institution of higher education that has knowledge of a
26 person’s homeless status may verify a person’s status as homeless
27 for purposes of this subclause.

28 (ii) For purposes of calculating a density bonus granted pursuant
29 to this subparagraph, the term “unit” as used in this section means
30 one rental bed and its pro rata share of associated common area
31 facilities. The units described in this subparagraph shall be subject
32 to a recorded affordability restriction of 55 years.

33 (G) One hundred percent of all units in the development,
34 including total units and density bonus units, but exclusive of a
35 manager’s unit or units, are for lower income households, as
36 defined by Section 50079.5 of the Health and Safety Code, except
37 that up to 20 percent of the units in the development, including
38 total units and density bonus units, may be for moderate-income
39 households, as defined in Section 50053 of the Health and Safety
40 Code.

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

6 (3) For the purposes of this section, “total units,” “total dwelling
7 units,” or “total rental beds” does not include units added by a
8 density bonus awarded pursuant to this section or any local law
9 granting a greater density bonus.

10 (c) (1) (A) An applicant shall agree to, and the city, county,
11 or city and county shall ensure, the continued affordability of all
12 very low and low-income rental units that qualified the applicant
13 for the award of the density bonus for 55 years or a longer period
14 of time if required by the construction or mortgage financing
15 assistance program, mortgage insurance program, or rental subsidy
16 program.

17 (B) (i) Except as otherwise provided in clause (ii), rents for the
18 lower income density bonus units shall be set at an affordable rent,
19 as defined in Section 50053 of the Health and Safety Code.

20 (ii) For housing developments meeting the criteria of
21 subparagraph (G) of paragraph (1) of subdivision (b), rents for all
22 units in the development, including both base density and density
23 bonus units, shall be as follows:

24 (I) The rent for at least 20 percent of the units in the
25 development shall be set at an affordable rent, as defined in Section
26 50053 of the Health and Safety Code.

27 (II) The rent for the remaining units in the development shall
28 be set at an amount consistent with the maximum rent levels for
29 a housing development that receives an allocation of state or federal
30 low-income housing tax credits from the California Tax Credit
31 Allocation Committee.

32 (2) An applicant shall agree to, and the city, county, or city and
33 county shall ensure that, the initial occupant of all for-sale units
34 that qualified the applicant for the award of the density bonus are
35 persons and families of very low, low, or moderate income, as
36 required, and that the units are offered at an affordable housing
37 cost, as that cost is defined in Section 50052.5 of the Health and
38 Safety Code. The local government shall enforce an equity sharing
39 agreement, unless it is in conflict with the requirements of another

1 public funding source or law. The following apply to the equity
2 sharing agreement:

3 (A) Upon resale, the seller of the unit shall retain the value of
4 any improvements, the downpayment, and the seller's proportionate
5 share of appreciation. The local government shall recapture any
6 initial subsidy, as defined in subparagraph (B), and its proportionate
7 share of appreciation, as defined in subparagraph (C), which
8 amount shall be used within five years for any of the purposes
9 described in subdivision (e) of Section 33334.2 of the Health and
10 Safety Code that promote home ownership.

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

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

22 (3) (A) An applicant shall be ineligible for a density bonus or
23 any other incentives or concessions under this section if the housing
24 development is proposed on any property that includes a parcel or
25 parcels on which rental dwelling units are or, if the dwelling units
26 have been vacated or demolished in the five-year period preceding
27 the application, have been subject to a recorded covenant,
28 ordinance, or law that restricts rents to levels affordable to persons
29 and families of lower or very low income; subject to any other
30 form of rent or price control through a public entity's valid exercise
31 of its police power; or occupied by lower or very low income
32 households, unless the proposed housing development replaces
33 those units, and either of the following applies:

34 (i) The proposed housing development, inclusive of the units
35 replaced pursuant to this paragraph, contains affordable units at
36 the percentages set forth in subdivision (b).

37 (ii) Each unit in the development, exclusive of a manager's unit
38 or units, is affordable to, and occupied by, either a lower or very
39 low income household.

1 (B) For the purposes of this paragraph, “replace” shall mean
2 either of the following:

3 (i) If any dwelling units described in subparagraph (A) are
4 occupied on the date of application, the proposed housing
5 development shall provide at least the same number of units of
6 equivalent size to be made available at affordable rent or affordable
7 housing cost to, and occupied by, persons and families in the same
8 or lower income category as those households in occupancy. If
9 the income category of the household in occupancy is not known,
10 it shall be rebuttably presumed that lower income renter households
11 occupied these units in the same proportion of lower income renter
12 households to all renter households within the jurisdiction, as
13 determined by the most recently available data from the United
14 States Department of Housing and Urban Development’s
15 Comprehensive Housing Affordability Strategy database. For
16 unoccupied dwelling units described in subparagraph (A) in a
17 development with occupied units, the proposed housing
18 development shall provide units of equivalent size to be made
19 available at affordable rent or affordable housing cost to, and
20 occupied by, persons and families in the same or lower income
21 category as the last household in occupancy. If the income category
22 of the last household in occupancy is not known, it shall be
23 rebuttably presumed that lower income renter households occupied
24 these units in the same proportion of lower income renter
25 households to all renter households within the jurisdiction, as
26 determined by the most recently available data from the United
27 States Department of Housing and Urban Development’s
28 Comprehensive Housing Affordability Strategy database. All
29 replacement calculations resulting in fractional units shall be
30 rounded up to the next whole number. If the replacement units will
31 be rental dwelling units, these units shall be subject to a recorded
32 affordability restriction for at least 55 years. If the proposed
33 development is for-sale units, the units replaced shall be subject
34 to paragraph (2).

35 (ii) If all dwelling units described in subparagraph (A) have
36 been vacated or demolished within the five-year period preceding
37 the application, the proposed housing development shall provide
38 at least the same number of units of equivalent size as existed at
39 the highpoint of those units in the five-year period preceding the
40 application to be made available at affordable rent or affordable

1 housing cost to, and occupied by, persons and families in the same
2 or lower income category as those persons and families in
3 occupancy at that time, if known. If the incomes of the persons
4 and families in occupancy at the highpoint is not known, it shall
5 be rebuttably presumed that low-income and very low income
6 renter households occupied these units in the same proportion of
7 low-income and very low income renter households to all renter
8 households within the jurisdiction, as determined by the most
9 recently available data from the United States Department of
10 Housing and Urban Development's Comprehensive Housing
11 Affordability Strategy database. All replacement calculations
12 resulting in fractional units shall be rounded up to the next whole
13 number. If the replacement units will be rental dwelling units,
14 these units shall be subject to a recorded affordability restriction
15 for at least 55 years. If the proposed development is for-sale units,
16 the units replaced shall be subject to paragraph (2).

17 (C) Notwithstanding subparagraph (B), for any dwelling unit
18 described in subparagraph (A) that is or was, within the five-year
19 period preceding the application, subject to a form of rent or price
20 control through a local government's valid exercise of its police
21 power and that is or was occupied by persons or families above
22 lower income, the city, county, or city and county may do either
23 of the following:

24 (i) Require that the replacement units be made available at
25 affordable rent or affordable housing cost to, and occupied by,
26 low-income persons or families. If the replacement units will be
27 rental dwelling units, these units shall be subject to a recorded
28 affordability restriction for at least 55 years. If the proposed
29 development is for-sale units, the units replaced shall be subject
30 to paragraph (2).

31 (ii) Require that the units be replaced in compliance with the
32 jurisdiction's rent or price control ordinance, provided that each
33 unit described in subparagraph (A) is replaced. Unless otherwise
34 required by the jurisdiction's rent or price control ordinance, these
35 units shall not be subject to a recorded affordability restriction.

36 (D) For purposes of this paragraph, "equivalent size" means
37 that the replacement units contain at least the same total number
38 of bedrooms as the units being replaced.

39 (E) Subparagraph (A) does not apply to an applicant seeking a
40 density bonus for a proposed housing development if the

1 applicant's application was submitted to, or processed by, a city,
2 county, or city and county before January 1, 2015.

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

11 (A) The concession or incentive does not result in identifiable
12 and actual cost reductions, consistent with subdivision (k), to
13 provide for affordable housing costs, as defined in Section 50052.5
14 of the Health and Safety Code, or for rents for the targeted units
15 to be set as specified in subdivision (c).

16 (B) The concession or incentive would have a specific, adverse
17 impact, as defined in paragraph (2) of subdivision (d) of Section
18 65589.5, upon public health and safety or the physical environment
19 or on any real property that is listed in the California Register of
20 Historical Resources and for which there is no feasible method to
21 satisfactorily mitigate or avoid the specific, adverse impact without
22 rendering the development unaffordable to low-income and
23 moderate-income households.

24 (C) The concession or incentive would be contrary to state or
25 federal law.

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

28 (A) One incentive or concession for projects that include at least
29 10 percent of the total units for lower income households, at least
30 5 percent for very low income households, or at least 10 percent
31 for persons and families of moderate income in a common interest
32 development.

33 (B) Two incentives or concessions for projects that include at
34 least 17 percent of the total units for lower income households, at
35 least 10 percent for very low income households, or at least 20
36 percent for persons and families of moderate income in a common
37 interest development.

38 (C) Three incentives or concessions for projects that include at
39 least 24 percent of the total units for lower income households, at
40 least 15 percent for very low income households, or at least 30

1 percent for persons and families of moderate income in a common
2 interest development.

3 (D) Four incentives or concessions for projects meeting the
4 criteria of subparagraph (G) of paragraph (1) of subdivision (b).
5 If the project is located within one-half mile of a major transit stop,
6 the applicant shall also receive a height increase of up to three
7 additional stories, or 33 feet.

8 (3) The applicant may initiate judicial proceedings if the city,
9 county, or city and county refuses to grant a requested density
10 bonus, incentive, or concession. If a court finds that the refusal to
11 grant a requested density bonus, incentive, or concession is in
12 violation of this section, the court shall award the plaintiff
13 reasonable attorney's fees and costs of suit. Nothing in this
14 subdivision shall be interpreted to require a local government to
15 grant an incentive or concession that has a specific, adverse impact,
16 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
17 upon health, safety, or the physical environment, and for which
18 there is no feasible method to satisfactorily mitigate or avoid the
19 specific adverse impact. Nothing in this subdivision shall be
20 interpreted to require a local government to grant an incentive or
21 concession that would have an adverse impact on any real property
22 that is listed in the California Register of Historical Resources.
23 The city, county, or city and county shall establish procedures for
24 carrying out this section that shall include legislative body approval
25 of the means of compliance with this section.

26 (4) The city, county, or city and county shall bear the burden
27 of proof for the denial of a requested concession or incentive.

28 (e) (1) In no case may a city, county, or city and county apply
29 any development standard that will have the effect of physically
30 precluding the construction of a development meeting the criteria
31 of subdivision (b) at the densities or with the concessions or
32 incentives permitted by this section. Subject to paragraph (3), an
33 applicant may submit to a city, county, or city and county a
34 proposal for the waiver or reduction of development standards that
35 will have the effect of physically precluding the construction of a
36 development meeting the criteria of subdivision (b) at the densities
37 or with the concessions or incentives permitted under this section,
38 and may request a meeting with the city, county, or city and county.
39 If a court finds that the refusal to grant a waiver or reduction of
40 development standards is in violation of this section, the court

1 shall award the plaintiff reasonable attorney’s fees and costs of
 2 suit. Nothing in this subdivision shall be interpreted to require a
 3 local government to waive or reduce development standards if the
 4 waiver or reduction would have a specific, adverse impact, as
 5 defined in paragraph (2) of subdivision (d) of Section 65589.5,
 6 upon health, safety, or the physical environment, and for which
 7 there is no feasible method to satisfactorily mitigate or avoid the
 8 specific adverse impact. Nothing in this subdivision shall be
 9 interpreted to require a local government to waive or reduce
 10 development standards that would have an adverse impact on any
 11 real property that is listed in the California Register of Historical
 12 Resources, or to grant any waiver or reduction that would be
 13 contrary to state or federal law.

14 (2) A proposal for the waiver or reduction of development
 15 standards pursuant to this subdivision shall neither reduce nor
 16 increase the number of incentives or concessions to which the
 17 applicant is entitled pursuant to subdivision (d).

18 (3) A housing development that receives a waiver from any
 19 maximum controls on density pursuant to clause (ii) of
 20 subparagraph (D) of paragraph (3) of subdivision (f) shall only be
 21 eligible for a waiver or reduction of development standards as
 22 provided in subparagraph (D) of paragraph (2) of subdivision (d)
 23 and clause (ii) of subparagraph (D) of paragraph (3) of subdivision
 24 (f), unless the city, county, or city and county agrees to additional
 25 waivers or reductions of development standards.

26 (f) For the purposes of this chapter, “density bonus” means a
 27 density increase over the otherwise maximum allowable gross
 28 residential density as of the date of application by the applicant to
 29 the city, county, or city and county, or, if elected by the applicant,
 30 a lesser percentage of density increase, including, but not limited
 31 to, no increase in density. The amount of density increase to which
 32 the applicant is entitled shall vary according to the amount by
 33 which the percentage of affordable housing units exceeds the
 34 percentage established in subdivision (b).

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

38		
39	Percentage Low-Income Units	Percentage Density
40		Bonus

1	10	20
2	11	21.5
3	12	23
4	13	24.5
5	14	26
6	15	27.5
7	16	29
8	17	30.5
9	18	32
10	19	33.5
11	20	35
12	21	38.75
13	22	42.5
14	23	46.25
15	24	50

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

29	Percentage Very Low Income Units	Percentage Density Bonus
30		
31	5	20
32	6	22.5
33	7	25
34	8	27.5
35	9	30
36	10	32.5
37	11	35
38	12	38.75
39	13	42.5
40	14	46.25

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

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

(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

1	12	7
2	13	8
3	14	9
4	15	10
5	16	11
6	17	12
7	18	13
8	19	14
9	20	15
10	21	16
11	22	17
12	23	18
13	24	19
14	25	20
15	26	21
16	27	22
17	28	23
18	29	24
19	30	25
20	31	26
21	32	27
22	33	28
23	34	29
24	35	30
25	36	31
26	37	32
27	38	33
28	39	34
29	40	35
30	41	38.75
31	42	42.5
32	43	46.25
33	44	50
34		

35 (5) All density calculations resulting in fractional units shall be
 36 rounded up to the next whole number. The granting of a density
 37 bonus shall not require, or be interpreted, in and of itself, to require
 38 a general plan amendment, local coastal plan amendment, zoning
 39 change, or other discretionary approval.

1 (g) (1) When an applicant for a tentative subdivision map,
 2 parcel map, or other residential development approval donates
 3 land to a city, county, or city and county in accordance with this
 4 subdivision, the applicant shall be entitled to a 15-percent increase
 5 above the otherwise maximum allowable residential density for
 6 the entire development, as follows:

	Percentage Very Low Income	Percentage Density Bonus
7		
8		
9	10	15
10	11	16
11	12	17
12	13	18
13	14	19
14	15	20
15	16	21
16	17	22
17	18	23
18	19	24
19	20	25
20	21	26
21	22	27
22	23	28
23	24	29
24	25	30
25	26	31
26	27	32
27	28	33
28	29	34
29	30	35
30		

31 (2) This increase shall be in addition to any increase in density
 32 mandated by subdivision (b), up to a maximum combined mandated
 33 density increase of 35 percent if an applicant seeks an increase
 34 pursuant to both this subdivision and subdivision (b). All density
 35 calculations resulting in fractional units shall be rounded up to the
 36 next whole number. Nothing in this subdivision shall be construed
 37 to enlarge or diminish the authority of a city, county, or city and
 38 county to require a developer to donate land as a condition of
 39 development. An applicant shall be eligible for the increased

1 density bonus described in this subdivision if all of the following
2 conditions are met:

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

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

11 (C) The transferred land is at least one acre in size or of
12 sufficient size to permit development of at least 40 units, has the
13 appropriate general plan designation, is appropriately zoned with
14 appropriate development standards for development at the density
15 described in paragraph (3) of subdivision (c) of Section 65583.2,
16 and is or will be served by adequate public facilities and
17 infrastructure.

18 (D) The transferred land shall have all of the permits and
19 approvals, other than building permits, necessary for the
20 development of the very low income housing units on the
21 transferred land, not later than the date of approval of the final
22 subdivision map, parcel map, or residential development
23 application, except that the local government may subject the
24 proposed development to subsequent design review to the extent
25 authorized by subdivision (i) of Section 65583.2 if the design is
26 not reviewed by the local government before the time of transfer.

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

31 (F) The land is transferred to the local agency or to a housing
32 developer approved by the local agency. The local agency may
33 require the applicant to identify and transfer the land to the
34 developer.

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

38 (H) A proposed source of funding for the very low income units
39 shall be identified not later than the date of approval of the final

1 subdivision map, parcel map, or residential development
2 application.

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

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

11 (B) An additional concession or incentive that contributes
12 significantly to the economic feasibility of the construction of the
13 childcare facility.

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

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

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

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

32 (4) “Childcare facility,” as used in this section, means a child
33 daycare facility other than a family daycare home, including, but
34 not limited to, infant centers, preschools, extended daycare
35 facilities, and schoolage childcare centers.

36 (i) “Housing development,” as used in this section, means a
37 development project for five or more residential units, including
38 mixed-use developments. For the purposes of this section, “housing
39 development” also includes a subdivision or common interest
40 development, as defined in Section 4100 of the Civil Code,

1 approved by a city, county, or city and county and consists of
2 residential units or unimproved residential lots and either a project
3 to substantially rehabilitate and convert an existing commercial
4 building to residential use or the substantial rehabilitation of an
5 existing multifamily dwelling, as defined in subdivision (d) of
6 Section 65863.4, where the result of the rehabilitation would be a
7 net increase in available residential units. For the purpose of
8 calculating a density bonus, the residential units shall be on
9 contiguous sites that are the subject of one development
10 application, but do not have to be based upon individual
11 subdivision maps or parcels. The density bonus shall be permitted
12 in geographic areas of the housing development other than the
13 areas where the units for the lower income households are located.

14 (j) (1) The granting of a concession or incentive shall not require
15 or be interpreted, in and of itself, to require a general plan
16 amendment, local coastal plan amendment, zoning change, study,
17 or other discretionary approval. For purposes of this subdivision,
18 “study” does not include reasonable documentation to establish
19 eligibility for the concession or incentive or to demonstrate that
20 the incentive or concession meets the definition set forth in
21 subdivision (k). This provision is declaratory of existing law.

22 (2) Except as provided in subdivisions (d) and (e), the granting
23 of a density bonus shall not require or be interpreted to require the
24 waiver of a local ordinance or provisions of a local ordinance
25 unrelated to development standards.

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

28 (1) A reduction in site development standards or a modification
29 of zoning code requirements or architectural design requirements
30 that exceed the minimum building standards approved by the
31 California Building Standards Commission as provided in Part 2.5
32 (commencing with Section 18901) of Division 13 of the Health
33 and Safety Code, including, but not limited to, a reduction in
34 setback and square footage requirements and in the ratio of
35 vehicular parking spaces that would otherwise be required that
36 results in identifiable and actual cost reductions, to provide for
37 affordable housing costs, as defined in Section 50052.5 of the
38 Health and Safety Code, or for rents for the targeted units to be
39 set as specified in subdivision (c).

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

7 (3) Other regulatory incentives or concessions proposed by the
8 developer or the city, county, or city and county that result in
9 identifiable and actual cost reductions to provide for affordable
10 housing costs, as defined in Section 50052.5 of the Health and
11 Safety Code, or for rents for the targeted units to be set as specified
12 in subdivision (c).

13 (l) Subdivision (k) does not limit or require the provision of
14 direct financial incentives for the housing development, including
15 the provision of publicly owned land, by the city, county, or city
16 and county, or the waiver of fees or dedication requirements.

17 (m) This section does not supersede or in any way alter or lessen
18 the effect or application of the California Coastal Act of 1976
19 (Division 20 (commencing with Section 30000) of the Public
20 Resources Code). Any density bonus, concessions, incentives,
21 waivers or reductions of development standards, and parking ratios
22 to which the applicant is entitled under this section shall be
23 permitted in a manner that is consistent with this section and
24 Division 20 (commencing with Section 30000) of the Public
25 Resources Code.

26 (n) If permitted by local ordinance, nothing in this section shall
27 be construed to prohibit a city, county, or city and county from
28 granting a density bonus greater than what is described in this
29 section for a development that meets the requirements of this
30 section or from granting a proportionately lower density bonus
31 than what is required by this section for developments that do not
32 meet the requirements of this section.

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

35 (1) "Development standard" includes a site or construction
36 condition, including, but not limited to, a height limitation, a
37 setback requirement, a floor area ratio, an onsite open-space
38 requirement, or a parking ratio that applies to a residential
39 development pursuant to any ordinance, general plan element,

1 specific plan, charter, or other local condition, law, policy,
2 resolution, or regulation.

3 (2) “Located within one-half mile of a major transit stop” means
4 that any point on a proposed development, for which an applicant
5 seeks a density bonus, other incentives or concessions, waivers or
6 reductions of development standards, or a vehicular parking ratio
7 pursuant to this section, is within one-half mile of any point on
8 the property on which a major transit stop is located, including
9 any parking lot owned by the transit authority or other local agency
10 operating the major transit stop.

11 (3) “Major transit stop” has the same meaning as defined in
12 subdivision (b) of Section 21155 of the Public Resources Code.

13 (4) “Maximum allowable residential density” means the density
14 allowed under the zoning ordinance and land use element of the
15 general plan, or, if a range of density is permitted, means the
16 maximum allowable density for the specific zoning range and land
17 use element of the general plan applicable to the project. If the
18 density allowed under the zoning ordinance is inconsistent with
19 the density allowed under the land use element of the general plan,
20 the general plan density shall prevail.

21 (p) (1) Except as provided in paragraphs (2), (3), and (4), upon
22 the request of the developer, a city, county, or city and county shall
23 not require a vehicular parking ratio, inclusive of ~~handicapped and~~
24 ~~guest parking,~~ *parking for persons with a disability and guests*, of
25 a development meeting the criteria of subdivisions (b) and (c), that
26 exceeds the following ratios:

27 (A) Zero to one bedroom: one onsite parking space.

28 (B) Two to three bedrooms: one and one-half onsite parking
29 spaces.

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

31 (2) (A) Notwithstanding paragraph (1), if a development
32 includes at least 20 percent ~~low-income~~ *low-income* units for
33 housing developments meeting the criteria of subparagraph (A)
34 of paragraph (1) of subdivision (b) or at least 11 percent very low
35 income units for housing developments meeting the criteria of
36 subparagraph (B) of paragraph (1) of subdivision (b), is located
37 within one-half mile of a major transit stop, and there is
38 unobstructed access to the major transit stop from the development,
39 then, upon the request of the developer, a city, county, or city and
40 county shall not impose a vehicular parking ratio, inclusive of

1 ~~handicapped and guest parking,~~ *parking for persons with a*
2 *disability and guests,* that exceeds 0.5 spaces per unit.

3 (B) For purposes of this subdivision, a development shall have
4 unobstructed access to a major transit stop if a resident is able to
5 access the major transit stop without encountering natural or
6 constructed impediments. For purposes of this subparagraph,
7 “natural or constructed impediments” includes, but is not limited
8 to, freeways, rivers, mountains, and bodies of water, but does not
9 include residential structures, shopping centers, parking lots, or
10 rails used for transit.

11 (3) Notwithstanding paragraph (1), if a development consists
12 solely of rental units, exclusive of a manager’s unit or units, with
13 an affordable housing cost to lower income families, as provided
14 in Section 50052.5 of the Health and Safety Code, then, upon the
15 request of the developer, a city, county, or city and county shall
16 not impose vehicular parking standards if the development meets
17 either of the following criteria:

18 (A) The development is located within one-half mile of a major
19 transit stop and there is unobstructed access to the major transit
20 stop from the development.

21 (B) The development is a for-rent housing development for
22 individuals who are 62 years of age or older that complies with
23 Sections 51.2 and 51.3 of the Civil Code and the development has
24 either paratransit service or unobstructed access, within one-half
25 mile, to fixed bus route service that operates at least eight times
26 per day.

27 (4) Notwithstanding paragraphs (1) and (8), if a development
28 consists solely of rental units, exclusive of a manager’s unit or
29 units, with an affordable housing cost to lower income families,
30 as provided in Section 50052.5 of the Health and Safety Code, and
31 the development is either a special needs housing development,
32 as defined in Section 51312 of the Health and Safety Code, or a
33 supportive housing development, as defined in Section 50675.14
34 of the Health and Safety Code, then, upon the request of the
35 developer, a city, county, or city and county shall not impose any
36 minimum vehicular parking requirement. A development that is
37 a special needs housing development shall have either paratransit
38 service or unobstructed access, within one-half mile, to fixed bus
39 route service that operates at least eight times per day.

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

7 (6) This subdivision shall apply to a development that meets
8 the requirements of subdivisions (b) and (c), but only at the request
9 of the applicant. An applicant may request parking incentives or
10 concessions beyond those provided in this subdivision pursuant
11 to subdivision (d).

12 (7) This subdivision does not preclude a city, county, or city
13 and county from reducing or eliminating a parking requirement
14 for development projects of any type in any location.

15 (8) Notwithstanding paragraphs (2) and (3), if a city, county,
16 city and county, or an independent consultant has conducted an
17 areawide or jurisdictionwide parking study in the last seven years,
18 then the city, county, or city and county may impose a higher
19 vehicular parking ratio not to exceed the ratio described in
20 paragraph (1), based upon substantial evidence found in the parking
21 study, that includes, but is not limited to, an analysis of parking
22 availability, differing levels of transit access, walkability access
23 to transit services, the potential for shared parking, the effect of
24 parking requirements on the cost of market-rate and subsidized
25 developments, and the lower rates of car ownership for low-income
26 and very low income individuals, including seniors and special
27 needs individuals. The city, county, or city and county shall pay
28 the costs of any new study. The city, county, or city and county
29 shall make findings, based on a parking study completed in
30 conformity with this paragraph, supporting the need for the higher
31 parking ratio.

32 (9) A request pursuant to this subdivision shall neither reduce
33 nor increase the number of incentives or concessions to which the
34 applicant is entitled pursuant to subdivision (d).

35 (q) Each component of any density calculation, including base
36 density and bonus density, resulting in fractional units shall be
37 separately rounded up to the next whole number. The Legislature
38 finds and declares that this provision is declaratory of existing law.

39 (r) This chapter shall be interpreted liberally in favor of
40 producing the maximum number of total housing units.

1 (s) Notwithstanding any other law, if a city, including a charter
2 city, county, or city and county has adopted an ordinance or a
3 housing program, or both an ordinance and a housing program,
4 that incentivizes the development of affordable housing that allows
5 for density bonuses that exceed the density bonuses required by
6 the version of this section effective through December 31, 2020,
7 that city, county, or city and county is not required to amend or
8 otherwise update its ordinance or corresponding affordable housing
9 incentive program to comply with the amendments made to this
10 section by the act adding this subdivision, and is exempt from
11 complying with the incentive and concession calculation
12 amendments made to this section by the act adding this subdivision
13 as set forth in subdivision (d), particularly subparagraphs (C) and
14 (D) of paragraph (2) of that subdivision, and the amendments made
15 to the density tables under subdivision (f).

16 *SEC. 2.5. Section 65915 of the Government Code is amended*
17 *to read:*

18 65915. (a) (1) When an applicant seeks a density bonus for
19 a housing development within, or for the donation of land for
20 housing within, the jurisdiction of a city, county, or city and county,
21 that local government shall comply with this section. A city,
22 county, or city and county shall adopt an ordinance that specifies
23 how compliance with this section will be implemented. ~~Failure~~
24 *Except as otherwise provided in subdivision (s), failure* to adopt
25 an ordinance shall not relieve a city, county, or city and county
26 from complying with this section.

27 (2) A local government shall not condition the submission,
28 review, or approval of an application pursuant to this chapter on
29 the preparation of an additional report or study that is not otherwise
30 required by state law, including this section. This subdivision does
31 not prohibit a local government from requiring an applicant to
32 provide reasonable documentation to establish eligibility for a
33 requested density bonus, incentives or concessions, as described
34 in subdivision (d), waivers or reductions of development standards,
35 as described in subdivision (e), and parking ratios, as described in
36 subdivision (p).

37 (3) In order to provide for the expeditious processing of a density
38 bonus application, the local government shall do all of the
39 following:

- 1 (A) Adopt procedures and timelines for processing a density
2 bonus application.
- 3 (B) Provide a list of all documents and information required to
4 be submitted with the density bonus application in order for the
5 density bonus application to be deemed complete. This list shall
6 be consistent with this chapter.
- 7 (C) Notify the applicant for a density bonus whether the
8 application is complete in a manner consistent with the timelines
9 specified in Section 65943.
- 10 (D) (i) If the local government notifies the applicant that the
11 application is deemed complete pursuant to subparagraph (C),
12 provide the applicant with a determination as to the following
13 matters:
 - 14 (I) The amount of density bonus, calculated pursuant to
15 subdivision (f), for which the applicant is eligible.
 - 16 (II) If the applicant requests a parking ratio pursuant to
17 subdivision (p), the parking ratio for which the applicant is eligible.
 - 18 (III) If the applicant requests incentives or concessions pursuant
19 to subdivision (d) or waivers or reductions of development
20 standards pursuant to subdivision (e), whether the applicant has
21 provided adequate information for the local government to make
22 a determination as to those incentives, concessions, or waivers or
23 reductions of development standards.
- 24 (ii) Any determination required by this subparagraph shall be
25 based on the development project at the time the application is
26 deemed complete. The local government shall adjust the amount
27 of density bonus and parking ratios awarded pursuant to this section
28 based on any changes to the project during the course of
29 development.
- 30 (b) (1) A city, county, or city and county shall grant one density
31 bonus, the amount of which shall be as specified in subdivision
32 (f), and, if requested by the applicant and consistent with the
33 applicable requirements of this section, incentives or concessions,
34 as described in subdivision (d), waivers or reductions of
35 development standards, as described in subdivision (e), and parking
36 ratios, as described in subdivision (p), ~~when~~ *if* an applicant for a
37 housing development seeks and agrees to construct a housing
38 development, excluding any units permitted by the density bonus
39 awarded pursuant to this section, that will contain at least any one
40 of the following:

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

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

7 (C) A senior citizen housing development, as defined in Sections
8 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
9 residency based on age requirements for housing for older persons
10 pursuant to Section 798.76 or 799.5 of the Civil Code.

11 (D) Ten percent of the total dwelling units ~~in a common interest~~
12 ~~development, as defined in Section 4100 of the Civil Code, for~~ *of*
13 *a housing development are sold to* persons and families of *low or*
14 moderate income, as defined in Section 50093 of the Health and
15 Safety Code, provided that all units in the development are offered
16 to the public for purchase.

17 (E) Ten percent of the total units of a housing development for
18 transitional foster youth, as defined in Section 66025.9 of the
19 Education Code, disabled veterans, as defined in Section 18541,
20 or homeless persons, as defined in the federal McKinney-Vento
21 Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units
22 described in this subparagraph shall be subject to a recorded
23 affordability restriction of 55 years and shall be provided at the
24 same affordability level as very low income units.

25 (F) (i) Twenty percent of the total units for lower income
26 students in a student housing development that meets the following
27 requirements:

28 (I) All units in the student housing development will be used
29 exclusively for undergraduate, graduate, or professional students
30 enrolled full time at an institution of higher education accredited
31 by the Western Association of Schools and Colleges or the
32 Accrediting Commission for Community and Junior Colleges. In
33 order to be eligible under this subclause, the developer shall, as a
34 condition of receiving a certificate of occupancy, provide evidence
35 to the city, county, or city and county that the developer has entered
36 into an operating agreement or master lease with one or more
37 institutions of higher education for the institution or institutions
38 to occupy all units of the student housing development with
39 students from that institution or institutions. An operating
40 agreement or master lease entered into pursuant to this subclause

1 is not violated or breached if, in any subsequent year, there are not
2 sufficient students enrolled in an institution of higher education
3 to fill all units in the student housing development.

4 (II) The applicable 20-percent units will be used for lower
5 income students. ~~For purposes of this clause, “lower income~~
6 ~~students” means students who have a household income and asset~~
7 ~~level that does not exceed the level for Cal Grant A or Cal Grant~~
8 ~~B award recipients as set forth in paragraph (1) of subdivision (k)~~
9 ~~of Section 69432.7 of the Education Code. The eligibility of a~~
10 ~~student under this clause shall be verified by an affidavit, award~~
11 ~~letter, or letter of eligibility provided by the institution of higher~~
12 ~~education that the student is enrolled in, as described in subclause~~
13 ~~(I), or by the California Student Aid Commission that the student~~
14 ~~receives or is eligible for financial aid, including an institutional~~
15 ~~grant or fee waiver, from the college or university, the California~~
16 ~~Student Aid Commission, or the federal government shall be~~
17 ~~sufficient to satisfy this subclause.~~

18 (III) The rent provided in the applicable units of the development
19 for lower income students shall be calculated at 30 percent of 65
20 percent of the area median income for a single-room occupancy
21 unit type.

22 (IV) The development will provide priority for the applicable
23 affordable units for lower income students experiencing
24 homelessness. A homeless service provider, as defined in paragraph
25 (3) of subdivision ~~(d)~~ (e) of Section 103577 of the Health and
26 Safety Code, or institution of higher education that has knowledge
27 of a person’s homeless status may verify a person’s status as
28 homeless for purposes of this subclause.

29 (ii) For purposes of calculating a density bonus granted pursuant
30 to this subparagraph, the term “unit” as used in this section means
31 one rental bed and its pro rata share of associated common area
32 facilities. The units described in this subparagraph shall be subject
33 to a recorded affordability restriction of 55 years.

34 (G) One hundred percent of ~~the total units~~, *all units in the*
35 *development, including total units and density bonus units, but*
36 *exclusive of a manager’s unit or units, are for lower income*
37 *households, as defined by Section 50079.5 of the Health and Safety*
38 *Code, except that up to 20 percent of the ~~total~~ units in the*
39 *development ~~development~~, including total units and density bonus*

1 *units*, may be for moderate-income households, as defined in
2 Section 50053 of the Health and Safety Code.

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

8 ~~(3) For the purposes of this section, “total units,” “total dwelling~~
9 ~~units,” or “total rental beds” does not include units added by a~~
10 ~~density bonus awarded pursuant to this section or any local law~~
11 ~~granting a greater density bonus.~~

12 (c) (1) (A) An applicant shall agree to, and the city, county,
13 or city and county shall ensure, the continued affordability of all
14 very low and low-income rental units that qualified the applicant
15 for the award of the density bonus for 55 years or a longer period
16 of time if required by the construction or mortgage financing
17 assistance program, mortgage insurance program, or rental subsidy
18 program.

19 (B) (i) Except as otherwise provided in clause (ii), rents for the
20 lower income density bonus units shall be set at an affordable rent,
21 as defined in Section 50053 of the Health and Safety Code.

22 (ii) For housing developments meeting the criteria of
23 subparagraph (G) of paragraph (1) of subdivision (b), rents for all
24 units in the development, including both base density and density
25 bonus units, shall be as follows:

26 (I) The rent for at least 20 percent of the units in the
27 development shall be set at an affordable rent, as defined in Section
28 50053 of the Health and Safety Code.

29 (II) The rent for the remaining units in the development shall
30 be set at an amount consistent with the maximum rent levels for
31 a housing development that receives an allocation of state or federal
32 low-income housing tax credits from the California Tax Credit
33 Allocation Committee.

34 (2) An applicant shall agree to, and the city, county, or city and
35 county shall ensure that, the initial occupant of all for-sale units
36 that qualified the applicant for the award of the density bonus are
37 persons and families of very low, low, or moderate income, as
38 required, and that the units are offered at an affordable housing
39 cost, as that cost is defined in Section 50052.5 of the Health and
40 Safety Code. The local government shall enforce an equity sharing

1 agreement, unless it is in conflict with the requirements of another
2 public funding source or law. The following apply to the equity
3 sharing agreement:

4 (A) Upon resale, the seller of the unit shall retain the value of
5 any improvements, the downpayment, and the seller's proportionate
6 share of appreciation. The local government shall recapture any
7 initial subsidy, as defined in subparagraph (B), and its proportionate
8 share of appreciation, as defined in subparagraph (C), which
9 amount shall be used within five years for any of the purposes
10 described in subdivision (e) of Section 33334.2 of the Health and
11 Safety Code that promote home ownership.

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

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

23 (3) (A) An applicant shall be ineligible for a density bonus or
24 any other incentives or concessions under this section if the housing
25 development is proposed on any property that includes a parcel or
26 parcels on which rental dwelling units are or, if the dwelling units
27 have been vacated or demolished in the five-year period preceding
28 the application, have been subject to a recorded covenant,
29 ordinance, or law that restricts rents to levels affordable to persons
30 and families of lower or very low income; subject to any other
31 form of rent or price control through a public entity's valid exercise
32 of its police power; or occupied by lower or very low income
33 households, unless the proposed housing development replaces
34 those units, and either of the following applies:

35 (i) The proposed housing development, inclusive of the units
36 replaced pursuant to this paragraph, contains affordable units at
37 the percentages set forth in subdivision (b).

38 (ii) Each unit in the development, exclusive of a manager's unit
39 or units, is affordable to, and occupied by, either a lower or very
40 low income household.

1 (B) For the purposes of this paragraph, “replace” shall mean
2 either of the following:

3 (i) If any dwelling units described in subparagraph (A) are
4 occupied on the date of application, the proposed housing
5 development shall provide at least the same number of units of
6 equivalent size to be made available at affordable rent or affordable
7 housing cost to, and occupied by, persons and families in the same
8 or lower income category as those households in occupancy. If
9 the income category of the household in occupancy is not known,
10 it shall be rebuttably presumed that lower income renter households
11 occupied these units in the same proportion of lower income renter
12 households to all renter households within the jurisdiction, as
13 determined by the most recently available data from the United
14 States Department of Housing and Urban Development’s
15 Comprehensive Housing Affordability Strategy database. For
16 unoccupied dwelling units described in subparagraph (A) in a
17 development with occupied units, the proposed housing
18 development shall provide units of equivalent size to be made
19 available at affordable rent or affordable housing cost to, and
20 occupied by, persons and families in the same or lower income
21 category as the last household in occupancy. If the income category
22 of the last household in occupancy is not known, it shall be
23 rebuttably presumed that lower income renter households occupied
24 these units in the same proportion of lower income renter
25 households to all renter households within the jurisdiction, as
26 determined by the most recently available data from the United
27 States Department of Housing and Urban Development’s
28 Comprehensive Housing Affordability Strategy database. All
29 replacement calculations resulting in fractional units shall be
30 rounded up to the next whole number. If the replacement units will
31 be rental dwelling units, these units shall be subject to a recorded
32 affordability restriction for at least 55 years. If the proposed
33 development is for-sale units, the units replaced shall be subject
34 to paragraph (2).

35 (ii) If all dwelling units described in subparagraph (A) have
36 been vacated or demolished within the five-year period preceding
37 the application, the proposed housing development shall provide
38 at least the same number of units of equivalent size as existed at
39 the highpoint of those units in the five-year period preceding the
40 application to be made available at affordable rent or affordable

1 housing cost to, and occupied by, persons and families in the same
2 or lower income category as those persons and families in
3 occupancy at that time, if known. If the incomes of the persons
4 and families in occupancy at the highpoint is not known, it shall
5 be rebuttably presumed that low-income and very low income
6 renter households occupied these units in the same proportion of
7 low-income and very low income renter households to all renter
8 households within the jurisdiction, as determined by the most
9 recently available data from the United States Department of
10 Housing and Urban Development's Comprehensive Housing
11 Affordability Strategy database. All replacement calculations
12 resulting in fractional units shall be rounded up to the next whole
13 number. If the replacement units will be rental dwelling units,
14 these units shall be subject to a recorded affordability restriction
15 for at least 55 years. If the proposed development is for-sale units,
16 the units replaced shall be subject to paragraph (2).

17 (C) Notwithstanding subparagraph (B), for any dwelling unit
18 described in subparagraph (A) that is or was, within the five-year
19 period preceding the application, subject to a form of rent or price
20 control through a local government's valid exercise of its police
21 power and that is or was occupied by persons or families above
22 lower income, the city, county, or city and county may do either
23 of the following:

24 (i) Require that the replacement units be made available at
25 affordable rent or affordable housing cost to, and occupied by,
26 low-income persons or families. If the replacement units will be
27 rental dwelling units, these units shall be subject to a recorded
28 affordability restriction for at least 55 years. If the proposed
29 development is for-sale units, the units replaced shall be subject
30 to paragraph (2).

31 (ii) Require that the units be replaced in compliance with the
32 jurisdiction's rent or price control ordinance, provided that each
33 unit described in subparagraph (A) is replaced. Unless otherwise
34 required by the jurisdiction's rent or price control ordinance, these
35 units shall not be subject to a recorded affordability restriction.

36 (D) For purposes of this paragraph, "equivalent size" means
37 that the replacement units contain at least the same total number
38 of bedrooms as the units being replaced.

39 (E) Subparagraph (A) does not apply to an applicant seeking a
40 density bonus for a proposed housing development if the

1 applicant's application was submitted to, or processed by, a city,
2 county, or city and county before January 1, 2015.

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

11 (A) The concession or incentive does not result in identifiable
12 and actual cost reductions, consistent with subdivision (k), to
13 provide for affordable housing costs, as defined in Section 50052.5
14 of the Health and Safety Code, or for rents for the targeted units
15 to be set as specified in subdivision (c).

16 (B) The concession or incentive would have a specific, adverse
17 impact, as defined in paragraph (2) of subdivision (d) of Section
18 65589.5, upon public health and safety or ~~the physical environment~~
19 ~~or~~ on any real property that is listed in the California Register of
20 Historical Resources and for which there is no feasible method to
21 satisfactorily mitigate or avoid the specific, adverse impact without
22 rendering the development unaffordable to low-income and
23 moderate-income households.

24 (C) The concession or incentive would be contrary to state or
25 federal law.

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

28 (A) One incentive or concession for projects that include at least
29 10 percent of the total units for lower income households, at least
30 5 percent for very low income households, or at least 10 percent
31 for persons and families of moderate income in a ~~common interest~~
32 ~~development.~~ *development in which the units are for sale.*

33 (B) Two incentives or concessions for projects that include at
34 ~~least 20~~ 17 percent of the total units for lower income households,
35 at least 10 percent for very low income households, or at least 20
36 percent for persons and families of moderate income in a ~~common~~
37 ~~interest development.~~ *development in which the units are for sale.*

38 (C) Three incentives or concessions for projects that include at
39 ~~least 30~~ 24 percent of the total units for lower income households,
40 at least 15 percent for very low income households, or at least 30

1 percent for persons and families of moderate income in a ~~common~~
2 ~~interest development.~~ *development in which the units are for sale.*

3 (D) Four incentives or concessions for ~~projects~~ *a project* meeting
4 the criteria of subparagraph (G) of paragraph (1) of subdivision
5 (b). If the project is located within one-half mile of a major transit
6 stop, ~~as defined in subdivision (b) of Section 21155 of the Public~~
7 ~~Resources Code~~, the applicant shall also receive a height increase
8 of up to three additional stories, or 33 feet.

9 (E) *One incentive or concession for projects that include at*
10 *least 20 percent of the total units for lower income students in a*
11 *student housing development.*

12 (3) The applicant may initiate judicial proceedings if the city,
13 county, or city and county refuses to grant a requested density
14 bonus, incentive, or concession. If a court finds that the refusal to
15 grant a requested density bonus, incentive, or concession is in
16 violation of this section, the court shall award the plaintiff
17 reasonable attorney's fees and costs of suit. ~~Nothing in this~~ *This*
18 subdivision shall *not* be interpreted to require a local government
19 to grant an incentive or concession that has a specific, adverse
20 impact, as defined in paragraph (2) of subdivision (d) of Section
21 65589.5, ~~upon health, safety, or the physical environment,~~ *health*
22 *or safety*, and for which there is no feasible method to satisfactorily
23 mitigate or avoid the specific adverse impact. ~~Nothing in this~~ *This*
24 subdivision shall *not* be interpreted to require a local government
25 to grant an incentive or concession that would have an adverse
26 impact on any real property that is listed in the California Register
27 of Historical Resources. The city, county, or city and county shall
28 establish procedures for carrying out this section that shall include
29 legislative body approval of the means of compliance with this
30 section.

31 (4) The city, county, or city and county shall bear the burden
32 of proof for the denial of a requested concession or incentive.

33 (e) (1) In no case may a city, county, or city and county apply
34 any development standard that will have the effect of physically
35 precluding the construction of a development meeting the criteria
36 of subdivision (b) at the densities or with the concessions or
37 incentives permitted by this section. Subject to paragraph (3), an
38 applicant may submit to a city, county, or city and county a
39 proposal for the waiver or reduction of development standards that
40 will have the effect of physically precluding the construction of a

1 development meeting the criteria of subdivision (b) at the densities
2 or with the concessions or incentives permitted under this section,
3 and may request a meeting with the city, county, or city and county.
4 If a court finds that the refusal to grant a waiver or reduction of
5 development standards is in violation of this section, the court
6 shall award the plaintiff reasonable attorney’s fees and costs of
7 suit. ~~Nothing in this~~ *This* subdivision shall *not* be interpreted to
8 require a local government to waive or reduce development
9 standards if the waiver or reduction would have a specific, adverse
10 impact, as defined in paragraph (2) of subdivision (d) of Section
11 65589.5, upon ~~health, safety, or the physical environment,~~ *health*
12 *or safety*, and for which there is no feasible method to satisfactorily
13 mitigate or avoid the specific adverse impact. ~~Nothing in this~~ *This*
14 subdivision shall *not* be interpreted to require a local government
15 to waive or reduce development standards that would have an
16 adverse impact on any real property that is listed in the California
17 Register of Historical Resources, or to grant any waiver or
18 reduction that would be contrary to state or federal law.

19 (2) A proposal for the waiver or reduction of development
20 standards pursuant to this subdivision shall neither reduce nor
21 increase the number of incentives or concessions to which the
22 applicant is entitled pursuant to subdivision (d).

23 (3) A housing development that receives a waiver from any
24 maximum controls on density pursuant to clause (ii) of
25 subparagraph (D) of paragraph (3) of subdivision (f) shall ~~not only~~
26 ~~be eligible for, and shall not receive,~~ *for* a waiver or reduction of
27 development standards ~~pursuant to this subdivision, other than as~~
28 ~~expressly as~~ *expressly as* provided in subparagraph (D) of paragraph (2) of
29 subdivision (d) and clause (ii) of subparagraph (D) of paragraph
30 (3) of subdivision ~~(f).~~ *(f), unless the city, county, or city and county*
31 *agrees to additional waivers or reductions of development*
32 *standards.*

33 (f) For the purposes of this chapter, “density bonus” means a
34 density increase over the otherwise maximum allowable gross
35 residential density as of the date of application by the applicant to
36 the city, county, or city and county, or, if elected by the applicant,
37 a lesser percentage of density increase, including, but not limited
38 to, no increase in density. The amount of density increase to which
39 the applicant is entitled shall vary according to the amount by

1 which the percentage of affordable housing units exceeds the
2 percentage established in subdivision (b).

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

6	Percentage Low-Income Units	Percentage Density Bonus
7		
8		
9	10	20
10	11	21.5
11	12	23
12	13	24.5
13	14	26
14	15	27.5
15	16	29
16	17	30.5
17	18	32
18	19	33.5
19	20	35
20	21	38.75
21	22	42.5
22	23	46.25
23	24	50

24
25 (2) For housing developments meeting the criteria of
26 subparagraph (B) of paragraph (1) of subdivision (b), the density
27 bonus shall be calculated as follows:

28	Percentage Very Low Income Units	Percentage Density Bonus
29		
30	5	20
31	6	22.5
32	7	25
33	8	27.5
34	9	30
35	10	32.5
36	11	35
37	12	38.75
38	13	42.5
39	14	46.25
40	15	50

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

4 (B) For housing developments meeting the criteria of
5 subparagraph (E) of paragraph (1) of subdivision (b), the density
6 bonus shall be 20 percent of the number of the type of units giving
7 rise to a density bonus under that subparagraph.

8 (C) For housing developments meeting the criteria of
9 subparagraph (F) of paragraph (1) of subdivision (b), the density
10 bonus shall be 35 percent of the student housing units.

11 (D) For housing developments meeting the criteria of
12 subparagraph (G) of paragraph (1) of subdivision (b), the following
13 shall apply:

14 (i) Except as otherwise provided in clause (ii), the density bonus
15 shall be 80 percent of the number of units for lower income
16 households.

17 (ii) If the housing development is located within one-half mile
18 of a major transit stop, ~~as defined in subdivision (b) of Section~~
19 ~~21155 of the Public Resources Code~~, the city, county, or city and
20 county shall not impose any maximum controls on density.

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

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

1	25	20
2	26	21
3	27	22
4	28	23
5	29	24
6	30	25
7	31	26
8	32	27
9	33	28
10	34	29
11	35	30
12	36	31
13	37	32
14	38	33
15	39	34
16	40	35
17	41	38.75
18	42	42.5
19	43	46.25
20	44	50

22 (5) All density calculations resulting in fractional units shall be
 23 rounded up to the next whole number. The granting of a density
 24 bonus shall not require, or be interpreted, in and of itself, to require
 25 a general plan amendment, local coastal plan amendment, zoning
 26 change, or other discretionary approval.

27 (g) (1) When an applicant for a tentative subdivision map,
 28 parcel map, or other residential development approval donates
 29 land to a city, county, or city and county in accordance with this
 30 subdivision, the applicant shall be entitled to a 15-percent increase
 31 above the otherwise maximum allowable residential density for
 32 the entire development, as follows:

34	Percentage Very Low Income	Percentage Density Bonus
35	10	15
36	11	16
37	12	17
38	13	18
39	14	19
40	15	20

1	16	21
2	17	22
3	18	23
4	19	24
5	20	25
6	21	26
7	22	27
8	23	28
9	24	29
10	25	30
11	26	31
12	27	32
13	28	33
14	29	34
15	30	35
16		

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

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

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

36 (C) The transferred land is at least one acre in size or of
37 sufficient size to permit development of at least 40 units, has the
38 appropriate general plan designation, is appropriately zoned with
39 appropriate development standards for development at the density
40 described in paragraph (3) of subdivision (c) of Section 65583.2,

1 and is or will be served by adequate public facilities and
2 infrastructure.

3 (D) The transferred land shall have all of the permits and
4 approvals, other than building permits, necessary for the
5 development of the very low income housing units on the
6 transferred land, not later than the date of approval of the final
7 subdivision map, parcel map, or residential development
8 application, except that the local government may subject the
9 proposed development to subsequent design review to the extent
10 authorized by subdivision (i) of Section 65583.2 if the design is
11 not reviewed by the local government before the time of transfer.

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

16 (F) The land is transferred to the local agency or to a housing
17 developer approved by the local agency. The local agency may
18 require the applicant to identify and transfer the land to the
19 developer.

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

23 (H) A proposed source of funding for the very low income units
24 shall be identified not later than the date of approval of the final
25 subdivision map, parcel map, or residential development
26 application.

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

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

35 (B) An additional concession or incentive that contributes
36 significantly to the economic feasibility of the construction of the
37 childcare facility.

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

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

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

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

16 (4) “Childcare facility,” as used in this section, means a child
17 daycare facility other than a family daycare home, including, but
18 not limited to, infant centers, preschools, extended daycare
19 facilities, and schoolage childcare centers.

20 (i) “Housing development,” as used in this section, means a
21 development project for five or more residential units, including
22 mixed-use developments. For the purposes of this section, “housing
23 development” also includes a subdivision or common interest
24 development, as defined in Section 4100 of the Civil Code,
25 approved by a city, county, or city and county and consists of
26 residential units or unimproved residential lots and either a project
27 to substantially rehabilitate and convert an existing commercial
28 building to residential use or the substantial rehabilitation of an
29 existing multifamily dwelling, as defined in subdivision (d) of
30 Section 65863.4, where the result of the rehabilitation would be a
31 net increase in available residential units. For the purpose of
32 calculating a density bonus, the residential units shall be on
33 contiguous sites that are the subject of one development
34 application, but do not have to be based upon individual
35 subdivision maps or parcels. The density bonus shall be permitted
36 in geographic areas of the housing development other than the
37 areas where the units for the lower income households are located.

38 (j) (1) The granting of a concession or incentive shall not require
39 or be interpreted, in and of itself, to require a general plan
40 amendment, local coastal plan amendment, zoning change, study,

1 or other discretionary approval. For purposes of this subdivision,
2 “study” does not include reasonable documentation to establish
3 eligibility for the concession or incentive or to demonstrate that
4 the incentive or concession meets the definition set forth in
5 subdivision (k). This provision is declaratory of existing law.

6 (2) Except as provided in subdivisions (d) and (e), the granting
7 of a density bonus shall not require or be interpreted to require the
8 waiver of a local ordinance or provisions of a local ordinance
9 unrelated to development standards.

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

12 (1) A reduction in site development standards or a modification
13 of zoning code requirements or architectural design requirements
14 that exceed the minimum building standards approved by the
15 California Building Standards Commission as provided in Part 2.5
16 (commencing with Section 18901) of Division 13 of the Health
17 and Safety Code, including, but not limited to, a reduction in
18 setback and square footage requirements and in the ratio of
19 vehicular parking spaces that would otherwise be required that
20 results in identifiable and actual cost reductions, to provide for
21 affordable housing costs, as defined in Section 50052.5 of the
22 Health and Safety Code, or for rents for the targeted units to be
23 set as specified in subdivision (c).

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

30 (3) Other regulatory incentives or concessions proposed by the
31 developer or the city, county, or city and county that result in
32 identifiable and actual cost reductions to provide for affordable
33 housing costs, as defined in Section 50052.5 of the Health and
34 Safety Code, or for rents for the targeted units to be set as specified
35 in subdivision (c).

36 (l) Subdivision (k) does not limit or require the provision of
37 direct financial incentives for the housing development, including
38 the provision of publicly owned land, by the city, county, or city
39 and county, or the waiver of fees or dedication requirements.

1 (m) This section does not supersede or in any way alter or lessen
2 the effect or application of the California Coastal Act of 1976
3 (Division 20 (commencing with Section 30000) of the Public
4 Resources Code). Any density bonus, concessions, incentives,
5 waivers or reductions of development standards, and parking ratios
6 to which the applicant is entitled under this section shall be
7 permitted in a manner that is consistent with this section and
8 Division 20 (commencing with Section 30000) of the Public
9 Resources Code.

10 (n) If permitted by local ordinance, nothing in this section shall
11 be construed to prohibit a city, county, or city and county from
12 granting a density bonus greater than what is described in this
13 section for a development that meets the requirements of this
14 section or from granting a proportionately lower density bonus
15 than what is required by this section for developments that do not
16 meet the requirements of this section.

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

19 (1) “Development standard” includes a site or construction
20 condition, including, but not limited to, a height limitation, a
21 setback requirement, a floor area ratio, an onsite open-space
22 requirement, or a parking ratio that applies to a residential
23 development pursuant to any ordinance, general plan element,
24 specific plan, charter, or other local condition, law, policy,
25 resolution, or regulation.

26 (2) “*Located within one-half mile of a major transit stop*” means
27 that any point on a proposed development, for which an applicant
28 seeks a density bonus, other incentives or concessions, waivers or
29 reductions of development standards, or a vehicular parking ratio
30 pursuant to this section, is within one-half mile of any point on the
31 property on which a major transit stop is located, including any
32 parking lot owned by the transit authority or other local agency
33 operating the major transit stop.

34 (3) “*Lower income student*” means a student who has a
35 household income and asset level that does not exceed the level
36 for Cal Grant A or Cal Grant B award recipients as set forth in
37 paragraph (1) of subdivision (k) of Section 69432.7 of the
38 Education Code. The eligibility of a student to occupy a unit for
39 lower income students under this section shall be verified by an
40 affidavit, award letter, or letter of eligibility provided by the

1 *institution of higher education in which the student is enrolled or*
 2 *by the California Student Aid Commission that the student receives*
 3 *or is eligible for financial aid, including an institutional grant or*
 4 *fee waiver from the college or university, the California Student*
 5 *Aid Commission, or the federal government.*

6 (4) *“Major transit stop” has the same meaning as defined in*
 7 *subdivision (b) of Section 21155 of the Public Resources Code.*

8 ~~(2)~~

9 (5) *“Maximum allowable residential density” means the density*
 10 *allowed under the zoning ordinance and land use element of the*
 11 *general plan, or, if a range of density is permitted, means the*
 12 *maximum allowable density for the specific zoning range and land*
 13 *use element of the general plan applicable to the project. If the*
 14 *density allowed under the zoning ordinance is inconsistent with*
 15 *the density allowed under the land use element of the general plan,*
 16 *the general plan density shall prevail.*

17 (6) *“Total units” or “total dwelling units” means a calculation*
 18 *of the number of units that:*

19 (A) *Excludes a unit added by a density bonus awarded pursuant*
 20 *to this section or any local law granting a greater density bonus.*

21 (B) *Includes a unit designated to satisfy an inclusionary zoning*
 22 *requirement of a city, county, or city and county.*

23 (p) (1) *Except as provided in paragraphs (2), (3), and (4), upon*
 24 *the request of the developer, a city, county, or city and county shall*
 25 *not require a vehicular parking ratio, inclusive of ~~handicapped and~~*
 26 *~~guest parking~~, parking for persons with a disability and guests, of*
 27 *a development meeting the criteria of subdivisions (b) and (c), that*
 28 *exceeds the following ratios:*

29 (A) *Zero to one bedroom: one onsite parking space.*

30 (B) *Two to three bedrooms: ~~two~~ one and one-half onsite parking*
 31 *spaces.*

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

33 (2) (A) *Notwithstanding paragraph (1), if a development*
 34 *includes ~~the maximum percentage of low-income or very low~~*
 35 *~~income units provided for in paragraphs (1) and (2) of subdivision~~*
 36 *~~(f) and at least 20 percent low-income units for housing~~*
 37 *~~developments meeting the criteria of subparagraph (A) of~~*
 38 *~~paragraph (1) of subdivision (b) or at least 11 percent very low~~*
 39 *~~income units for housing developments meeting the criteria of~~*
 40 *~~subparagraph (B) of paragraph (1) of subdivision (b), is located~~*

1 within one-half mile of a major transit stop, ~~as defined in~~
2 ~~subdivision (b) of Section 21155 of the Public Resources Code,~~
3 ~~and there is~~ *the residents of the development have unobstructed*
4 *access to the major transit stop from the development, then, upon*
5 *the request of the developer, a city, county, or city and county shall*
6 *not impose a vehicular parking ratio, inclusive of handicapped and*
7 ~~guest parking,~~ *parking for persons with a disability and guests,*
8 *that exceeds 0.5 spaces per bedroom. For unit. Notwithstanding*
9 *paragraph (1), if a development includes at least 40 percent*
10 *moderate-income units for housing developments meeting the*
11 *criteria of subparagraph (D) of paragraph (1) of subdivision (b),*
12 *is located within one-half mile of a major transit stop, as defined*
13 *in subdivision (b) of Section 21155 of the Public Resources Code,*
14 *and the residents of the development have unobstructed access to*
15 *the major transit stop from the development, then, upon the request*
16 *of the developer, a city, county, or city and county shall not impose*
17 *a vehicular parking ratio, inclusive of parking for persons with a*
18 *disability and guests, that exceeds 0.5 spaces per bedroom.*

19 (B) ~~For purposes of this subdivision, a development shall have~~
20 ~~unobstructed~~ *“unobstructed access to a the major transit stop if*
21 *stop” means a resident is able to access the major transit stop*
22 *without encountering natural or constructed impediments. For*
23 *purposes of this subparagraph, “natural or constructed*
24 *impediments” includes, but is not limited to, freeways, rivers,*
25 *mountains, and bodies of water, but does not include residential*
26 *structures, shopping centers, parking lots, or rails used for transit.*

27 (3) ~~Notwithstanding paragraph (1), if a development consists~~
28 ~~solely of rental units, exclusive of a manager’s unit or units, with~~
29 ~~an affordable housing cost to lower income families, as provided~~
30 ~~in Section 50052.5 of the Health and Safety Code, then, upon the~~
31 ~~request of the developer, a city, county, or city and county shall~~
32 ~~not impose a vehicular parking ratio, inclusive of handicapped and~~
33 ~~guest parking, that exceeds the following ratios: vehicular parking~~
34 ~~standards if the development meets either of the following criteria:~~

35 (A) ~~If the~~ *The development is located within one-half mile of*
36 *a major transit stop, as defined in subdivision (b) of Section 21155*
37 *of the Public Resources Code, stop and there is* *the residents of*
38 *the development have unobstructed access to the major transit stop*
39 *from the development, the ratio shall not exceed 0.5 spaces per*
40 ~~unit.~~ *development.*

1 (B) ~~If the~~ *The* development is a for-rent housing development
2 for individuals who are 62 years of age or older that complies with
3 Sections 51.2 and 51.3 of the Civil Code, ~~the ratio shall not exceed~~
4 ~~0.5 spaces per unit. The development shall~~ *Code and the residents*
5 *of the development* have either *access to* paratransit service or
6 unobstructed access, within one-half mile, to fixed bus route service
7 that operates at least eight times per day.

8 (4) Notwithstanding paragraphs (1) and (8), if a development
9 consists solely of rental units, exclusive of a manager's unit or
10 units, with an affordable housing cost to lower income families,
11 as provided in Section 50052.5 of the Health and Safety Code, and
12 the development is either a special needs housing development,
13 as defined in Section 51312 of the Health and Safety Code, or a
14 supportive housing development, as defined in Section 50675.14
15 of the Health and Safety Code, then, upon the request of the
16 developer, a city, county, or city and county shall not impose any
17 minimum vehicular parking requirement. A development that is
18 a special needs housing development shall have either paratransit
19 service or unobstructed access, within one-half mile, to fixed bus
20 route service that operates at least eight times per day.

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

27 (6) This subdivision shall apply to a development that meets
28 the requirements of subdivisions (b) and (c), but only at the request
29 of the applicant. An applicant may request parking incentives or
30 concessions beyond those provided in this subdivision pursuant
31 to subdivision (d).

32 (7) This subdivision does not preclude a city, county, or city
33 and county from reducing or eliminating a parking requirement
34 for development projects of any type in any location.

35 (8) Notwithstanding paragraphs (2) and (3), if a city, county,
36 city and county, or an independent consultant has conducted an
37 areawide or jurisdictionwide parking study in the last seven years,
38 then the city, county, or city and county may impose a higher
39 vehicular parking ratio not to exceed the ratio described in
40 paragraph (1), based upon substantial evidence found in the parking

1 study, that includes, but is not limited to, an analysis of parking
2 availability, differing levels of transit access, walkability access
3 to transit services, the potential for shared parking, the effect of
4 parking requirements on the cost of market-rate and subsidized
5 developments, and the lower rates of car ownership for low-income
6 and very low income individuals, including seniors and special
7 needs individuals. The city, county, or city and county shall pay
8 the costs of any new study. The city, county, or city and county
9 shall make findings, based on a parking study completed in
10 conformity with this paragraph, supporting the need for the higher
11 parking ratio.

12 (9) A request pursuant to this subdivision shall neither reduce
13 nor increase the number of incentives or concessions to which the
14 applicant is entitled pursuant to subdivision (d).

15 (q) Each component of any density calculation, including base
16 density and bonus density, resulting in fractional units shall be
17 separately rounded up to the next whole number. The Legislature
18 finds and declares that this provision is declaratory of existing law.

19 (r) This chapter shall be interpreted liberally in favor of
20 producing the maximum number of total housing units.

21 (s) *Notwithstanding any other law, if a city, including a charter*
22 *city, county, or city and county has adopted an ordinance or a*
23 *housing program, or both an ordinance and a housing program,*
24 *that incentivizes the development of affordable housing that allows*
25 *for density bonuses that exceed the density bonuses required by*
26 *the version of this section effective through December 31, 2020,*
27 *that city, county, or city and county is not required to amend or*
28 *otherwise update its ordinance or corresponding affordable*
29 *housing incentive program to comply with the amendments made*
30 *to this section by the act adding this subdivision, and is exempt*
31 *from complying with the incentive and concession calculation*
32 *amendments made to this section by the act adding this subdivision*
33 *as set forth in subdivision (d), particularly subparagraphs (C) and*
34 *(D) of paragraph (2) of that subdivision, and the amendments*
35 *made to the density tables under subdivision (f).*

36 (t) (1) *The Legislature finds and declares that the intent behind*
37 *the Density Bonus Law is to allow public entities to reduce or even*
38 *eliminate subsidies for a particular project by allowing a developer*
39 *to include more total units in a project than would otherwise be*
40 *allowed by the local zoning ordinance in exchange for affordable*

1 units. It further reaffirms that the intent is to cover at least some
2 of the financing gap of affordable housing with regulatory
3 incentives, rather than additional public subsidy.

4 (2) It is therefore the intent of the Legislature to make
5 modifications to the Density Bonus Law by the act adding this
6 subdivision to further incentivize the construction of very low,
7 low-, and moderate-income housing units. It is further the intent
8 of the Legislature in making these modifications to the Density
9 Bonus Law to ensure that any additional benefits conferred upon
10 a developer are balanced with the receipt of a public benefit in
11 the form of adequate levels of affordable housing. The Legislature
12 further intends that these modifications will ensure that the Density
13 Bonus Law creates incentives for the construction of more housing
14 across all areas of the state.

15 SEC. 3. (a) Section 1.3 of this bill incorporates amendments
16 to Section 65400 of the Government Code proposed by both this
17 bill and Assembly Bill No. 168. That section shall only become
18 operative if (1) both bills are enacted and become effective on or
19 before January 1, 2021, (2) each bill amends Section 65400 of the
20 Government Code, (3) Senate Bill No. 1085 is not enacted or as
21 enacted does not amend that section, and (4) this bill is enacted
22 after Assembly Bill No. 168, in which case Section 65400 of the
23 Government Code, as amended by Assembly Bill No. 168, shall
24 remain operative only until the operative date of this bill, at which
25 point Section 1.3 of this bill shall become operative and Sections
26 1, 1.5, and 1.7 of this bill shall not become operative.

27 (b) Section 1.5 of this bill incorporates amendments to Section
28 65400 of the Government Code proposed by both this bill and
29 Senate Bill No. 1085. That section shall only become operative if
30 (1) both bills are enacted and become effective on or before
31 January 1, 2021, (2) each bill amends Section No. 65400 of the
32 Government Code, (3) Assembly Bill No. 168 is not enacted or as
33 enacted does not amend that section, and (4) this bill is enacted
34 after Senate Bill No. 1085 in which case Sections 1, 1.3, and 1.7
35 of this bill shall not become operative.

36 (c) Section 1.7 of this bill incorporates amendments to Section
37 65400 of the Government Code proposed by this bill, Assembly
38 Bill No. 168, and Senate Bill No. 1085. That section shall only
39 become operative if (1) all three bills are enacted and become
40 effective on or before January 1, 2021, (2) all three bills amend

1 *Section 65400 of the Government Code, and (3) this bill is enacted*
2 *after Assembly Bill No. 168 and Senate Bill No. 1085, in which*
3 *case Section 65400 of the Government Code, as amended by*
4 *Assembly Bill No. 168, shall remain operative only until the*
5 *operative date of this bill, at which point Section 1.7 of this bill*
6 *shall become operative and Sections 1, 1.3, and 1.5 of this bill*
7 *shall not become operative.*

8 *SEC. 4. Section 2.5 of this bill incorporates amendments to*
9 *Section 65915 of the Government Code proposed by both this bill*
10 *and Senate Bill No. 1085. That section shall only become operative*
11 *if (1) both bills are enacted and become effective on or before*
12 *January 1, 2021, (2) each bill amends Section 65915 of the*
13 *Government Code, and (3) this bill is enacted after Senate Bill No.*
14 *1085, in which case Section 2 of this bill shall not become*
15 *operative.*

16 ~~SEC. 3.~~

17 *SEC. 5. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *a local agency or school district has the authority to levy service*
20 *charges, fees, or assessments sufficient to pay for the program or*
21 *level of service mandated by this act, within the meaning of Section*
22 *17556 of the Government Code.*

Guide to the California Density Bonus Law

BY JON GOETZ AND TOM SAKAI

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Introduction and Overview

Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 35% increase in project densities for most projects, depending on the amount of affordable housing provided, and an 80% increase in density for projects which are completely affordable. 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. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. 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. As with any state mandate, some local governments will resist complying with the state requirement. But many local governments favor the density bonus as a helpful tool to cut through their own land use requirements and local political issues.
- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.
- Special development bonuses are available for developers of commercial projects who partner with affordable housing developers to provide onsite or offsite affordable housing. Special bonuses are also available for condominium conversion projects and projects that include childcare facilities.
- The Legislature has recently added density bonuses for housing developments for foster youth, disabled veterans, homeless persons and college students.

How the Density Bonus Works

PROJECTS ENTITLED TO A 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.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- 100% of the housing units (other than manager's units) are restricted to very low, lower and moderate income residents (with a maximum of 20% moderate).
- At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobilehome park age-restricted to senior citizens (no affordable units required).

DENSITY BONUS AMOUNT

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level, as shown in the chart on the following page.



DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	35%	23%	7%	17%	20%	20%	-
13%	35%	24.5%	8%	18%	20%	20%	-
14%	35%	26%	9%	19%	20%	20%	-
15%	35%	27.5%	10%	20%	20%	20%	-
16%	35%	27.5%	11%	21%	20%	20%	-
17%	35%	30.5%	12%	22%	20%	20%	-
18%	35%	32%	13%	23%	20%	20%	-
19%	35%	33.5%	14%	24%	20%	20%	-
20%	35%	35%	15%	25%	20%	20%	35%
21%	35%	35%	16%	26%	20%	20%	35%
22%	35%	35%	17%	27%	20%	20%	35%
23%	35%	35%	18%	28%	20%	20%	35%
24%	35%	35%	19%	29%	20%	20%	35%
25%	35%	35%	20%	30%	20%	20%	35%
26%	35%	35%	21%	31%	20%	20%	35%
27%	35%	35%	22%	32%	20%	20%	35%
28%	35%	35%	23%	33%	20%	20%	35%
29%	35%	35%	24%	34%	20%	20%	35%
30%	35%	35%	25%	35%	20%	20%	35%
31%	35%	35%	26%	35%	20%	20%	35%
32%	35%	35%	27%	35%	20%	20%	35%
33%	35%	35%	28%	35%	20%	20%	35%
34%	35%	35%	29%	35%	20%	20%	35%
35%	35%	35%	30%	35%	20%	20%	35%
36%	35%	35%	31%	35%	20%	20%	35%
37%	35%	35%	32%	35%	20%	20%	35%
38%	35%	35%	33%	35%	20%	20%	35%
39%	35%	35%	34%	35%	20%	20%	35%
40%	35%	35%	35%	35%	20%	20%	35%
100%*****	80%	80%	80%	35%	20%	20%	35%

*All density bonus calculations resulting in fractions are rounded up to the next whole number.

**Affordable unit percentage is calculated excluding units added by a density bonus.

***Moderate income density bonus applies to for sale units, not to rental units.

****No affordable units are required for senior units.

***** Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate).

REQUIRED 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 (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing, do not appear to be entitled to incentives or concessions). A concession or incentive is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed use zoning; or
- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project:

NO. OF INCENTIVES/ CONCESSIONS	VERY LOW INCOME PERCENTAGE	LOWER INCOME PERCENTAGE	MODERATE INCOME PERCENTAGE
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%
4	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)

The city or county is required to grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. The Density Bonus Law restricts the types of information and reports that a developer may be required to provide to the local jurisdiction in order to obtain the requested incentive or concession. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers and reductions in dedication requirements may be, but are not required to be, provided by the city or county. The developer may be entitled to the incentives and concessions even without a request for a density bonus.

OTHER FORMS OF ASSISTANCE

A development qualifying for a density bonus also receives two additional forms of assistance which have important benefits for a housing project:

- **Waiver or Reduction of Development Standards.** If any other city or 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 to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. The city or county is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. The waiver or reduction of a development standard does not count as an incentive or concession, and there is no limit on the number of development standard waivers that may be requested or granted. Development standards which have been waived or reduced utilizing this section include setback, lot coverage and open space requirements, and should apply to building height limits as well. This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus.

- **Maximum Parking Requirements.** Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of handicapped and guest parking):

Studio	1 space
1 Bedroom	1 space
2 Bedroom	2 spaces
3 Bedroom	2 spaces
4 Bedroom	2.5 spaces

- **Special Parking Requirements.** Lower parking ratios apply to specified projects (although local jurisdictions can require higher parking ratios if supported by a specified parking study):

Rental/for sale projects with at least 11% very low income or 20% lower income units, within 1/2 mile of accessible major transit stop	0.5 spaces per bedroom
Rental projects 100% affordable to lower income, within 1/2 mile of accessible major transit stop	0.5 spaces per unit
Rental senior projects 100% affordable to lower income, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0.5 spaces per unit
Rental special needs projects 100% affordable to lower income households, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0 spaces per unit
Rental supportive housing developments 100% affordable to lower income households	0 spaces per unit

Onsite spaces may be provided through tandem or uncovered parking, but not onstreet parking. Requesting these parking standards does not count as an incentive or concession, but the developer may request further parking standard reductions as an incentive or concession. This is one of the most important benefits of the density bonus statute. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units. In higher density developments requiring the use of structured parking, the construction cost of structured parking is very expensive, costing upwards of \$20,000 per parking space. While this provision of the density bonus statute can be used to reduce excessive parking requirements, care must be taken not to impact the project's marketability by reducing parking to minimum requirements which lead to parking shortages.

AFFORDABLE HOUSING RESTRICTIONS

- **Rental Units.** Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55 year term for very low or lower income units (formerly only a 30 year term was required). Rents must be restricted as follows:



- For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
 - For lower income units, rents may not exceed 30% x 60% of the area median income for a household size suitable for the unit.
 - In 100% affordable housing developments, the rent for at least 20% of the units must meet the rent standards of Health and Safety Code Section 50053, and the remaining units may instead meet Low Income Housing Tax Credit rent standards.
 - Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
 - Rents must include a reasonable utility allowance.
 - Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.
- **For Sale Units.** Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.
 - For very low income units, housing costs may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
 - For lower income units, housing costs may not exceed 30% x 70% of the area median income for a household size suitable for the unit.
 - For moderate income units, housing costs may not exceed 35% x 110% of the area median income for a household size suitable for the unit.
 - Buyers must enter into an equity sharing agreement with the city or county, unless the equity sharing requirements conflict with the requirements of another public funding source or law. The equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city or county a portion of any appreciation received on resale.
 - The city/county percentage of appreciation is the purchase price discount received by the original buyer, plus any down payment assistance provided by the city/county. (For example, if the original sales price is \$200,000, and the original fair market value is \$250,000, and there is no city/county down payment assistance, the city/county subsidy is \$50,000, and the city/county's share of appreciation is 20%).



- 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 (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years).

LOCAL GOVERNMENT PROCESSING OF DENSITY BONUS APPLICATIONS

Under new legislation effective in 2019, local governments are now required to notify developers what information must be submitted for a complete density bonus application. Once a development application is determined to be complete, the local government must notify the developer the level of density bonus and parking ratio the development is eligible to receive. If the developer requests incentives, concessions, waivers or reductions of development standards, the local jurisdiction is required to notify the developer if it has submitted sufficient information necessary for the local government to make a determination on those issues.

HOW THE DENSITY BONUS WORKS FOR 100% AFFORDABLE PROJECTS

2019 legislation requires local governments to grant an 80% density bonus to housing projects in which all of the units (other than manager's units) are restricted to very low, low and moderate income residents, with a maximum of 20% restricted to moderate income units. If a 100% affordable project is located within a half mile of a major transit stop, the local government may not impose any maximum density limits at all, and the project is further entitled to receive a maximum height increase of up to three additional stories or 33 feet. However, if the project receives a waiver from maximum controls on density, it is not eligible for the waiver or reduction of any development standards which would otherwise be available. 100% affordable projects are also entitled to a fourth incentive or concession.

HOW THE DENSITY BONUS WORKS FOR SENIOR PROJECTS

As shown in the Density Bonus Chart on page 4, a senior citizen housing development of at least 35 units meeting the requirements of Section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus. This is a very desirable option for senior housing developments. In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus.

HOW THE DENSITY BONUS WORKS FOR STUDENT HOUSING PROJECTS

New legislation taking effect in 2019 requires cities and counties to grant a 35% density bonus for housing developments that will include at least 20% of the units for low income college students. The housing must be used exclusively for full-time students at accredited colleges, and must be subject to an operating agreement or master lease with one or more colleges. Unlike the maximum income requirements for other forms of affordable housing, resident income levels are determined through the student's eligibility for the state's Cal Grant financial aid program. Affordable rent levels are also specially tailored for a student population, with maximum rents established per bed for individual residents, rather than for the entire apartment unit. Homeless students receive priority for affordable units.

HOW THE DENSITY BONUS WORKS FOR COMMERCIAL PROJECTS

The Density Bonus Law requires that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. The commercial developer may participate through the donation of land or funds for the

affordable housing, or direct construction of the housing units. The partnership between the commercial developer and the affordable developer can occur through a newly formed legal entity such as a corporation, LLC or partnership, or can take the shape of a contractual agreement between the parties. To be eligible for the development bonus, at least 30% of the housing units must be restricted to lower income residents or 15% of the housing units must be restricted to very low income residents. Unlike the primary Density Bonus Law, there is no fixed amount of increased density awarded to the developer. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, use of a limited use elevator, or an exception to a zoning ordinance or land use requirement. Commercial developers who need extra leverage to obtain more favorable development standards for their project may want to consider providing affordable housing in order to take advantage of the benefits of the development bonus.

HOW THE DENSITY BONUS WORKS FOR CONDOMINIUM CONVERSION PROJECTS

The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% for the total units to low or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful.

HOW THE DENSITY BONUS WORKS FOR CHILDCARE

Housing projects that provide childcare are eligible for a separate density bonus equal to the size of the childcare facility. The childcare facility must remain in operation for at least the length of the affordability covenants. A percentage of the childcare spaces must also be made available to low and moderate income families. A separate statute permits cities and counties to grant density bonuses to commercial and industrial projects of at least 50,000 square feet, when the developer sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a childcare facility.

HOW TO OBTAIN A DENSITY BONUS THROUGH LAND DONATION

Many market rate housing developers are uncomfortable with building and marketing affordable units themselves, whether due to their lack of experience with the affordable housing process or because of their desire to concentrate on their core market rate homes. Other developers may have sites that are underutilized in terms of project density. The Density Bonus Law contains a special sliding scale bonus for land donation which allows those developers to turn over the actual development of the affordable units to local agencies or experienced low income developers. The density bonus is available for the donation of at least an acre of fully entitled land, with all needed public facilities and infrastructure, and large enough for the construction of a high density very low income project containing 10% of the total homes in the development. The parcel must be located within the boundary of the proposed development or, subject to the approval of the jurisdiction, within one-fourth mile of the boundary of the proposed development. The more units that can be built on the donated land, the larger the density bonus. Because of the parcel size requirements, this option is only practical for larger developments. The land donation density bonus can be combined with the regular density bonus provided for the development of affordable units, up to a maximum 35% density bonus. A master planned community developer needs to carefully evaluate the land donation option as opposed to engaging an affordable housing developer to fulfill the project's affordable housing obligations. In many cases the master developer will prefer to control the affordable component of the project through a direct agreement with the affordable housing developer, rather than allowing the local government to control the project.

FLOOR AREA RATIO BONUSES

Under new legislation effective in 2019, a local jurisdiction is 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. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits.

How the Density Bonus Can Help in a Friendly Jurisdiction

While the Density Bonus Law is often used by developers to obtain more housing than the local jurisdiction would ordinarily permit, it can also be a helpful land use tool in jurisdictions which favor the proposed project and want to provide support. Planners in many cities and counties may be disposed by personal ideology or local policy to encourage the construction of higher density housing and mixed use developments near transit stops and downtown areas, but are hampered by existing general plan standards and zoning from approving these sorts of projects. Elected officials often support these projects too, but may find it politically difficult to oppose neighborhood and environmental groups over the necessary general plan amendments, zoning changes and CEQA approvals.

The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes. A project that satisfies the requirements of the Density Bonus Law often can obtain the necessary land use approvals through the award of the density bonus units and requested concessions and incentives, without having to amend the underlying land use requirements. Friendly local officials may encourage the use of the density bonus to “force” the jurisdiction to approve a desired project.



How the Density Bonus Law Can Help in a Hostile Jurisdiction

It is important to know that the density bonus is a state law requirement which is mandatory on cities and counties, even charter cities which are free from many other state requirements. A developer who meets the law's requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of the locality's desires (subject to limited health and safety exceptions). The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer, or other reductions in development standards if needed to achieve the total density permitted by the density bonus.

Developers who nonetheless encounter hostility from local jurisdictions are provided several tools to ensure that a required density bonus is actually granted. Developers are entitled to an informal meeting with a local jurisdiction which fails to modify a requested development standard. If a developer successfully sues the locality to enforce the density bonus requirements, it is entitled to an award of its attorneys' fees. The obligation to pay a developer's attorneys' fees is a powerful incentive for local jurisdictions to voluntarily comply with the state law density bonus requirements, even when the jurisdiction is not in favor of its effects on the project.

CEQA Issues in Density Bonus Projects

Although there is no specific density bonus exemption from the California Environmental Quality Act, many density bonus projects are likely candidates for urban infill and affordable housing exemptions from CEQA. One commonly invoked exemption is the Class 32 urban infill exemption found in CEQA Guidelines Section 15332. That exemption is available if the project is consistent with applicable general plan designation and zoning, the site is five acres or less and surrounded by urban uses, is not habitat for endangered, rare or threatened species, does not have any significant effects relating to traffic, noise, air quality or water quality, and is adequately served by utilities and public services. Other exemptions are available for high density housing projects near major transit stops (CEQA Guidelines Section 15195) and affordable housing projects of up to 100 units (CEQA Guidelines Section 15194).

A 2011 case, *Wollmer v. City of Berkeley*, clarified the use of the CEQA infill exemption for density bonus projects. In that case, an opponent of a Berkeley density bonus project challenged the City's use of the urban infill exemption on the grounds that the City's modifications and waivers of development standards, as required under the Density Bonus Law, meant that the project was not consistent with existing zoning. The court rejected that argument, finding that the modifications required by the Density Bonus Law did not disqualify the project from claiming the exemption.

Not all density bonus projects will qualify for one of these CEQA exemptions, however. Sometimes the additional density provided to non-exempt projects may bring the project out of the coverage of an existing CEQA approval for a general plan, specific plan or other larger project. For instance, if a previously approved environmental impact report analyzed a 100 unit project as the largest allowed under existing zoning, but the developer is able to qualify for 120 units with a density bonus, the existing EIR may not cover the larger project. The larger density bonus project may require additional CEQA analysis for approval.

Using the Density Bonus to Satisfy Inclusionary Housing Requirements

Many of California's cities and counties have adopted inclusionary housing ordinances, which typically require that a specified percentage of units in a new housing development be restricted as affordable units. The inclusionary requirements significantly reduce income from rental units and sales prices of for-sale homes. In today's tight housing market, compliance with local inclusionary requirements may make many projects economically infeasible. The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary A 2013 case, *Latinos Unidos del Valle*

de Napa y Solano v. County of Napa, held that inclusionary units qualify housing requirements as affordable units for purposes of the Density Bonus Law. The case confirmed that the density bonus is a financial tool available to help developers achieve city and county inclusionary housing requirements.

Density Bonus and Replacement Housing

Developers obtaining a density bonus are required to replace existing units which 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. The housing development must also meet the applicable affordable housing standards, including the replacement units. As a result of uncertainty about how to apply these standards when the income levels of prior residents is unknown. The Density Bonus Law establishes a rebuttable presumption for the income level of the replacement unit when the income level of the actual prior resident is unknown.

Density Bonus in the Coastal Zone

When affordable housing is proposed in the coastal zone, the Density Bonus Law's focus on encouraging the development of affordable housing could clash with the California Coastal Act's focus on environmental protection. Legislation effective in 2019 now requires the density bonus to be administered in the Coastal Zone in a manner that is consistent and harmonized with the California Coastal Act. This legislation overturns a 2016 appellate court ruling, *Kalnel Gardens, LLC v. City of Los Angeles*, which found that a proposed housing project that violates the Coastal Act as a result of a density bonus could be denied on that basis. The court in *Kalnel Gardens* held that the Density Bonus Law is subordinate to the Coastal Act, but the new language attempts to strike a balance between the state goals of promoting housing and protecting the coast.

Density Bonus – A Flexible Tool

The Density Bonus Law can be a powerful tool for different types of development projects, whether they are traditional affordable housing projects, predominantly market rate housing developments, or senior projects. Obtaining greater density can help the developer of any project bring costs and financing sources into line by putting more homes on the land, reducing the per unit land costs. Use of the favorable parking requirements can reduce the amount of costly land needed for parking. The incentives and concessions to be provided by the local government can provide a helpful way to modify development requirements which may stand in the way of a successful project. Of course there is a price to pay for these benefits—the affordable units needed to earn the density bonus. Developers need to make a cost-benefit determination whether the cost of compliance is worth the benefits. But the Density Bonus Law is unquestionably a useful option for housing developers trying to make financial sense of projects in today's economy.

Density Bonus Statutes

Government Code Sections 65915 – 65918.

Effective as of January 1, 2020

65915. (a) (1) 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 comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of

development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), 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 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.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 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.

(E) Ten percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, "lower income students" means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata

share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(G) One hundred percent of the total units, exclusive of a manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an 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), (D), (E), (F), or (G) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) (A) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(B) (i) Except as otherwise provided in clause (ii), 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.

(ii) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(I) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Section 50053 of the Health and Safety Code.

(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the

award of the density bonus are persons and families of very low, low, or moderate income, as required, 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, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(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 local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied

by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the

jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(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 any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), 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-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(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.

(D) Four incentives or concessions for projects meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(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.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically 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. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, 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, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from

any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall not be eligible for, and shall not receive, a waiver or reduction of development standards pursuant to this subdivision, other than as expressly provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f).

(f) For the purposes of this chapter, "density bonus" means a 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. The amount of density increase 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) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b),

the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(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 require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (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 in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density 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 an increase pursuant to both 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 with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) 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, not later than the date of approval of the final subdivision map, parcel map, or residential development application, 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 before the time of transfer.

(E) 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 the transfer.

(F) 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.

(G) 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.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare 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 childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare 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 childcare 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 childcare 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 city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

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

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 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 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 units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) 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 and actual cost reductions, 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).

(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 Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(l) Subdivision (k) 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) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, 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 a 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 residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under 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. If 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.

(p) (1) Except as provided in paragraphs (2), (3), and (4) upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: 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) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight

times per day.

(C) Notwithstanding paragraphs (1) and (8), if the development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) 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.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, 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. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither

reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

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.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

65915.7.

(a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing described in subdivision (c) to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city, county, or city and county shall grant to the commercial developer a development bonus as prescribed in subdivision (b). Housing shall be constructed on the site of the commercial development or on a site that is all of the following:

- (1) Within the boundaries of the local government.
- (2) In close proximity to public amenities including schools and employment centers.
- (3) Located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(b) The development bonus granted to the commercial developer shall mean incentives, mutually agreed upon by the developer and the jurisdiction, that may include, but are not limited to, any of the following:

- (1) Up to a 20-percent increase in maximum allowable intensity in the General Plan.
- (2) Up to a 20-percent increase in maximum allowable floor area ratio.
- (3) Up to a 20-percent increase in maximum height requirements.
- (4) Up to a 20-percent reduction in minimum parking requirements.
- (5) Use of a limited-use/limited-application elevator for upper floor accessibility.
- (6) An exception to a zoning ordinance or other land use regulation.

(c) For the purposes of this section, the agreement for partnered housing shall be between the commercial developer and the housing developer, shall identify how the commercial developer will contribute affordable housing, and shall be approved by the city, county, or city and county.

(d) For the purposes of this section, affordable housing may be contributed by the commercial developer in one of the following manners:

- (1) The commercial developer may directly build the units.
- (2) The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing.
- (3) The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.

(e) For the purposes of this section, subparagraph (A) of paragraph (3) of subdivision (c) of Section 65915 shall apply.

(f) Nothing in this section shall preclude any additional

allowances or incentives offered to developers by local governments pursuant to law or regulation.

(g) If the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement described in subdivision (c), the local government may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.

(h) In order to qualify for a development bonus under this section, a commercial developer shall partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.

(i) Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under Section 65915.

(j) A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.

(k) A city or county shall submit to the Department of Housing and Community Development, as part of the annual report required by Section 65400, information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.

(l) For purposes of this section, “partner” shall mean formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.

(m) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

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.

65917.2.

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

(1) "Eligible housing development" means a development that satisfies all of the following criteria:

(A) The development is a multifamily housing development that contains five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(B) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(C) The site of the development is zoned to allow residential use or mixed-use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for exclusive nonresidential use.

(D) The applicant and the development satisfy the replacement requirements specified in subdivision (c) of Section 65915.

(E) The development includes at least 20 percent of the units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health

and Safety Code, and subject to an affordability restriction for a minimum of 55 years.

(F) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation.

(2) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(3) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county, calculated pursuant to paragraph (2) of subdivision (b).

(4) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(5) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(b) (1) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio bonus, calculated as provided in paragraph (2), in lieu of a density bonus awarded on the basis of dwelling units per acre.

(2) In calculating the floor area ratio bonus pursuant to this section, the allowable gross residential floor area in square feet shall be the product of all of the following amounts:

(A) The allowable residential base density in dwelling units per acre.

(B) The site area in square feet, divided by 43,560.

(C) 2,250.

(c) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(d) A city or county that adopts a floor area ratio bonus ordinance pursuant to this section shall allow an applicant seeking to develop an eligible residential development to calculate impact fees based on square feet, instead of on a per unit basis.

(e) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(f) An applicant for a floor area ratio bonus pursuant to this section may also submit to the city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

(g) (1) This section shall not be interpreted to do either of the following:

(A) Supersede or preempt any other section within this chapter.

(B) Prohibit a city, county, or city and county from providing a floor area ratio bonus under terms that are different from those set forth in this section.

(2) The adoption of an ordinance pursuant to this section shall not be interpreted to relieve a city, county, or city and county from complying with Section 65915.

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 an 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 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. A penalty levied 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 child care 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.



Images courtesy of PrefabADU and HCD

California Department of Housing and
Community Development

PC Attachment 3

Accessory Dwelling Unit Handbook

September 2020



Where foundations begin

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Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce the quality of life and produce negative environmental impacts.

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care, thus helping extended families stay together while maintaining privacy. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2020, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a summary of legislation since 2019 that amended ADU law and became effective as of January 1, 2020.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Government Code Sections 65852.2, 65852.22 and further address barriers to the development of ADUs and JADUs) (Attachment A includes the combined ADU statute updates from SB 13, AB 68 and AB 881.)

This recent legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020 and January 1, 2025 ((Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet ((Gov. Code, § 65852.2, subd. (c)(2)(B) & (C)).

- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement off-street parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Government Code Section 65852.2, Subdivision (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy RHNA housing needs (Gov. Code § 65853.1, subd. (a), and § 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subd. (a)(3), (b), and (e)).
- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); Former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health and Safety Code § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These recent pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civil Code Section 4751).

- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code § 65583; Health and Safety Code § 50504.5)

Frequently Asked Questions: Accessory Dwelling Units¹

1. Legislative Intent

- **Should a local ordinance encourage the development of accessory dwelling units?**

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval, and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

¹ Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C))

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3))

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure and a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Gov. Code § 65852.2, subd. (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i) & (a)(5))

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a Statewide Exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 foot in height and with 4-foot side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined with a JADU within any zone allowing residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code § 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 sq. ft (or at least 1000 square feet. for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing

percentages of primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subd. (a)(1)(D)(x)(l) and (j)(11))

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi))

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Gov. Code § 65852.2, subd. (d)(1-5) and (j)(10))

- (1) Accessory dwelling unit is located within one-half mile walking distance of public transit.
- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.

- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii))

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c))

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A))

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home (Gov. Code, § 65852.2, subd. (f) and Government Code § 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A))

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- a. One ADU or JADU per lot within the existing space of a single-family dwelling, or an ADU within an accessory structure that meets specified requirements such as exterior access and setbacks for fire and safety.
- b. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.
- c. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.
- d. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs

shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under Building and Safety Codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for Health & Safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU within the existing or proposed space of a single-family dwelling can be expanded 150 square feet beyond the physical dimensions of the structure but shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2))

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subd. (a)(6) & (e)(4))

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020 and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. – (Gov. Code, § 65852.2, subd. (a)(2))

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subd. (a)(1)(D)(xii) and (e)(3))

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence”. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC’s website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD’s website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family

residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1))

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subd. (a)(1), (a)(4), and (h)(1))

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet “beyond the physical dimensions of the existing accessory structure” to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2))

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health and Safety Code §18007).

Health and Safety Code section 18007, subdivision (a) “**Manufactured home,**” for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency's Regional Housing Needs Allocation?**

Yes. Pursuant to Gov. Code § 65852.2 subd. (m) and Government Code section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires the California Department of Housing and Community Development to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code § 65583 and Health and Safety Code § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU?**

No. Assembly Bill 670 (2019) amended Section 4751 of the Civil Code to preclude planned developments from prohibiting or unreasonably restricting the construction or use of an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or reasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable. Applicants who encounter issues with creating ADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU Ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU Ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to the California Department of Housing and Community Development (HCD) within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1))

Local governments may also submit a draft ADU ordinance for preliminary review by the HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. - (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources



Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2 (AB 881, AB 68 and SB 13 Accessory Dwelling Units) (Changes noted in strikeout, underline/italics)

Effective January 1, 2020, Section 65852.2 of the Government Code is amended to read:

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily *dwelling residential* use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria that may include, but are not limited to,~~ the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. *A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.*
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, ~~lot coverage,~~ landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic ~~Places.~~ *Resources. These standards shall not include requirements on minimum lot size.*
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The *accessory dwelling* unit may be rented separate from the primary residence, ~~but~~ *but* may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily *dwelling residential* use and includes a proposed or existing ~~single-family dwelling.~~
- (iii) The accessory dwelling unit is either attached ~~to,~~ or located ~~within the living area of the~~ *within, the* proposed or existing primary ~~dwelling or dwelling, including attached garages, storage areas or similar uses, or an accessory structure or~~ detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) ~~The total area of floorspace of~~ *If there is an existing primary dwelling, the total floor area of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~proposed or existing primary dwelling living area or 1,200 square feet.~~ *existing primary dwelling.*
- (v) The total ~~floor area of floorspace~~ *floor area* for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing ~~garage living area or~~ *accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure* that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than ~~five~~ *four* feet from the side and rear lot lines shall be required for an accessory dwelling unit that is ~~constructed above a garage.~~ *not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.*
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per *accessory dwelling* unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
- (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to a an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an

accessory dwelling unit or converted to an accessory dwelling unit, and- the local agency requires- shall not require that those ~~offstreet~~ offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d); replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) ~~When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application-~~ A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature; incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency ~~subsequent to the effective date of the act adding this paragraph-~~ shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. ~~In the event that-~~ If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph- and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the ~~delay or~~ denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot ~~zoned for residential use-~~ that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be ~~utilized~~ used or imposed, including any owner-occupant requirement, except that a local agency may require an applicant for a permit ~~issued pursuant to this subdivision to be an owner-occupant or-~~ that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) ~~within 120 days after receiving the application.~~ (a) The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted

with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

~~(c) (C) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the proposed or existing primary dwelling, shall be established by ordinance or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.~~

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) ~~Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a zone for single-family use one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. A city may require owner-occupancy for either the primary or the accessory dwelling unit created through this process. within a residential or mixed-use zone to create any of the following:~~

(A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not

used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) ~~Accessory-~~ An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

~~(A)~~ (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

~~(B)~~ (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size ~~square feet~~ or the number of its plumbing fixtures, drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

~~Local (1) agencies-~~ A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. The department may review and comment on this submitted ordinance. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) (i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which that provides complete independent living facilities for one or more persons. ~~persons and is located on a lot with a proposed or existing primary residence.~~ It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(A) (3) An efficiency unit. ~~"Efficiency unit" has the same meaning~~ as defined in Section 17958.1 of the Health and Safety Code.

(B) (4) A manufactured home, as defined in Section 18007 of the Health and Safety Code. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(5) (8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(6) (11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(j) (l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2).

below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

(Becomes operative on January 1, 2025)

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2020 statute noted in underline/italic):

65852.2.

(a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines

shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

(xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, ~~including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.~~ imposed except that, *subject to subparagraph (B)*, a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.
- (e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:
- (A) One accessory dwelling unit or junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:
- (i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.
- (ii) The space has exterior access from the proposed or existing single-family dwelling.
- (iii) The side and rear setbacks are sufficient for fire and safety.
- (iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.
- (B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:
- (i) A total floor area limitation of not more than 800 square feet.
- (ii) A height limitation of 16 feet.
- (C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.
- (ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and may shall allow up to 25 percent of the existing multifamily dwelling units.
- (D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.
- (2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.
- (3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.
- (4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).
- (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.
- ~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite water treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.
- ~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1,

2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Neighborhood" has the same meaning as set forth in Section 65589.5.

(A) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(7) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(8) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(9) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(10) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(11) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed~~ become operative on January 1, 2025.

Effective January 1, 2020, Section 65852.22 of the Government Code is amended to read (changes noted in ~~strikeout~~, underline/italics) (AB 68 (Ting)):

65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence ~~already built~~ built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the ~~existing~~ walls of the structure, ~~and require the inclusion of an existing bedroom.~~ proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, ~~with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.~~ proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

~~(A) A sink with a maximum waste line diameter of 1.5 inches.~~

~~(B) (A) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.~~ appliances.

~~(C) (B)~~ (B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine ~~whether~~ if the junior accessory dwelling unit ~~is in compliance~~ complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. ~~A permit shall be issued within 120 days of submission of an application for a permit pursuant to this section.~~ The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing

single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For ~~the~~ purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For ~~the~~ purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

~~(g)~~ (h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within ~~an existing~~ a single-family structure. residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is added to the Health and Safety Code, immediately following Section 17980.11, to read (changes noted in underline/italics) (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 65852.26 is added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

(1) The property was built or developed by a qualified nonprofit corporation.

(2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:

(A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.

(B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.

(C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.

(D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.

(4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.

(5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.

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

(1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 4751 is added to the Civil Code, to read (AB 670 (Friedman)):

4751.

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6
AB 671 Accessory Dwelling Units
(Changes noted in underline/italics)

Effective January 1, 2020, Section 65583(c)(7) of the Government Code is added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 is added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains a proposed or existing, dwelling.	65852.2(a)(1)(D)(ii)
	The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet.	65852.2(a)(1)(D)(iv), (c)(2)(B) & C
	Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.	65852.2(a)(1)(D)(vii)
	Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)(I)

Attachment 3: Bibliography

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer
Terner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Terner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)
Terner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29pp.)

By Karen Chapple et al (2017)
Terner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain \(37 pp.\)](#)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

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November 9, 2020

Marin County Planning Commission
c/o Jeremy Tejinian, Planning Manager
Marin County Community Development Agency
3501 Civic Center Drive, Suite 308, San Rafael, CA 94903

RE: Proposed Amendment of Lot Area Definition and Master Plan Amendments

The various definitions of “Lot Area” that have been used and applied in the Marin County Zoning Code for several decades have ignored the terminology’s impact and consequences to property owners; residential, commercial, industrial; built, to be renovated, developed and/or redeveloped, protected from major weather or physical calamities, such as hurricanes, earthquakes, fires, climate change, flooding, progressive seal level rise, subsidence, failed pumping stations and tide gates, etc. which brings up the need to have clear definitions and flexible tools to assist and implement promptly, corrective measures by the County Community Development Agency, the Department of Public Works and the Building Department to assist, guide and expedite the implementations of proven , as well as, disruptive solutions to maintain, protect and help the property owners and surrounding community from very serious, if not terminal damage and destruction.. Such as the proposed new definition of “lot area is exclusive of adjacent street or paper streets ...and any portion of the property located below mean high tide that is subject to tidal action”.

Staff has stated in the Background Section of the project summary, Section ‘D’ and Section ‘E’ that the code revisions they propose are a high priority of the Planning Division, intended to produce amendments that are clear and simple, yet are enforceable and as efficient as possible. This is a commendable objective that everyone should support in a participatory and constructive manner.

Accordingly, and as one example of many others in the county, let us take a look at the community that starts east of Highway #1; beginning where the seaplanes and helicopters land and take-off, next to the iconic house boat community, in addition to a construction and storage yard, outdoor patio furniture outlet, a large office building overhanging Richardson Bay, a Park and Ride lot and the Cal Trans maintenance and repair shop below the Richardson Bay Bridge overpass, which is also the destination of the bus shuttle that Marin visitors take to reach our National and State Parks or continue on to West Marin.

It happens that back in the eighteen hundreds, the Sausalito Land & Ferry Co. developed, plotted and sold lots in this area, which included privately owned streets on Richardson Bay, some filled, some dredged and some that subsided and were refilled over time. The only public street in that area is a short, paved 60 foot wide and approximately 120 foot long strip that starts at the edge of Highway 1 (Shoreline Highway) that was offered, dedicated and built by the adjacent

landowners when the existing office building was constructed and accepted by the County - in the late 1970's – named Pohono Street.

The fact that the current lot owners also owned their adjacent streets was reaffirmed a couple of years ago by the County of Marin in a settlement with several of these property owners through an official unanimous vote by the Board of Supervisors that was confirmed by the Superior Court.

We are providing you with this information to be sure that you help the County and all the property owners and residents in similar situated conditions proceed ahead in a cooperative result-oriented manner to address and avoid the possible complexities and time-consuming interpretations that would be caused by adopting the proposed verbiage, without thoughtful consideration, can cause!

Specifically for our area, I request that you exempt it from any of the existing or future definitions of “Lot Area”, paper street and floor area ratio (FAR) as the future development objectives and guidelines are stated in the existing “Tam Valley Community Plan” and the agreement entered into by the County of Marin and the various (4) property owners in this area.

Finally, regarding Section H. *Solar Energy Systems*, the above referenced area includes approximately 10 ½ acres of tide lots owned by one of the property owners who resolved all the private street issues with the County. I also request that any solar energy system that may be installed on these lots/blocks comply with the *Solar Rights Act* (Govt. Code section 65850-65863.13).

Best Wishes,

Jack Krystal