



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

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Subject: **IMPLEMENTATION OF THE STATE DENSITY BONUS LAW**
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BACKGROUND

The California State Density Bonus Law was first enacted in 1979 and offers incentives to developers who provide on-site affordable housing. The State Law offers three categories of benefits to incentivize the provision of on-site affordable housing. First, the State Law allows developers a maximum 35% density bonus above the maximum allowable density under a local jurisdiction's zoning laws. Second, the State Law allows developers waivers from any local development standard in order to accommodate, or fit, their project – with the increased density and concessions and incentives – on a site. Third, the State Law allows Project Sponsors to request up to three incentives or concessions (generally, defined as a reduction of development standards, modifications of zoning code requirements, or approval of mixed use zoning) to offset the costs of providing affordable housing on-site. The State Law does not limit the types of concessions or incentives, and municipalities *must grant* any requested incentive or concession unless the City has substantial evidence that the concession or incentive does not have a positive financial impact on the projects. The amount of the density bonus and the number of incentives and concessions is based on a sliding scale, depending on the amount and level of affordability of the housing.

In 2013, the California Court of Appeal, in *Latinos Unidos del Valle de Napa y Solono v. County of Napa*, clarified that developers who provided locally required affordable units, such as through an inclusionary ordinance, were entitled to the State-mandated density bonuses, concessions and incentives, and waivers. For San Francisco, this ruling means that projects that elect to provide inclusionary housing units on-site are eligible for a density bonus under State Law.

San Francisco does not have a comprehensive ordinance implementing the State Density Bonus Law. Without a comprehensive ordinance in place, the City has no mechanism in which to encourage density bonus projects to choose concessions, incentives and waivers that are compatible with San Francisco expectations for design or neighborhood character. Instead, the Department must review development proposals under the permissive construct established by the State Density Bonus Law (Exhibit A. California Government Code Section 65915-65918). The Mayor and Supervisor Tang, in concert with Planning Department staff, have introduced a local, comprehensive ordinance that is working its way through the legislative process – the State Analyzed and Individually Requested programs of the Affordable Housing Bonus Program (AHBP); however, in the absence of an adopted local ordinance, the Department should have a process and procedure for projects seeking a density bonus under State Law.

INTRODUCTION

Until a comprehensive local ordinance is adopted, the Planning Department shall review and approve all requests for a State Density Bonus projects with three guiding documents: the San Francisco General Plan, the San Francisco Planning Code and the State Density Bonus Law. Given there is not a locally adopted procedure, process or policy, the following memorandum summarizes the Planning Department's interim process. The memo is organized by the three types of benefits conferred through the State Density Bonus Law: 1) density, 2) waivers, and 3) concessions and incentives. These three topics are discussed first, and then the memo closes with a discussion of implementation and the Affordable Housing Bonus Program (AHBP) which is currently pending before the Board of Supervisors.

The **density bonus** is established by State Law; the City has no discretion whether to approve the increased density within a project. The requested **waivers** relate to the buildable envelope and are necessary to achieve the extra density. The City has minimal discretion on requested waivers. Generally, the City can only deny a waiver if the granting of said waiver would result in specific, adverse impact upon health, safety, or the physical environment, or if it would have an adverse impact on any property listed in the California Register of Historical Resources.

Finally, up to three **concessions or incentives** may be granted, depending on the amount and level of affordability in the project. The concessions and incentives must financially benefit the project. Although the same Planning Code section may be the subject of a waiver or a concession or incentive, it is important to note that under the State Law concessions or incentives should offset financial costs of providing the affordable housing, and only up to three must be granted. In contrast, a developer can request an unlimited number of waivers, and waivers are not required to offset financial costs. Waivers must be granted if they are necessary to build the project at the density and with the concessions and incentives requested.

INCREASED DENSITY

Base Density: Planning Code Definition

In order to determine how much of a density bonus State Law would allow, the density allowed by current controls, the "base density," must first be calculated. Residential density regulations in San Francisco vary by zoning district. In some districts residential density is regulated by a ratio of units to lot area, such as one unit per 600 square feet of lot area. In other districts, residential density is regulated by the permitted volume – either the maximum floor area ratio (FAR) or in some cases a maximum height and bulk, and sometimes a unit mix requirement. For example, in the NCT zoning districts, a parcel's density is restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and dwelling-unit mix requirements. While there are some exceptions or modifications permitted in the current Planning Code, the base density for the purposes of a State Density Bonus would generally be measured based on the factors listed above.

Density Bonus: Permitted Density Under State Law.

The State Law provides a clear and non-negotiable metric for determining the permitted density bonus, up to 35% above the base density. The table below summarizes the Density Bonus based on the level of affordability.

Restricted Affordable Units or Category	Minimum % of Restricted Affordable Units	% of Density Bonus Granted	Additional Bonus for each 1% Increase in Restricted Affordable Units
Very Low Income 50% AMI or below	5%	20%	2.5%
Lower Income 80% AMI or below	10%	20%	1.5%
Moderate Income 120% AMI or below	10%	5%	1%
Senior Housing	100%	20%	

For example, if a 100 unit project provides 18 low-income units (18%), the project may receive an additional 32 bonus, market-rate units. The final project would have 132 units – 18 affordable and 114 market-rate units. To seek the maximum 35% density bonus, the Project would have to supply 11% of the 100 base units as very low income, 20% of the units as lower income, or 40% of the units as moderate income.

Review and Approval

Project Sponsors will be required to provide a calculation of the base density founded on the existing Planning Code Requirements, and a calculation of State Density Bonus. In the case of districts where density is regulated by volume, Project Sponsors may be requested to demonstrate that the base density can be achieved as a Code-conforming project that requires no waivers, modification or variances from zoning requirements. This evidence would be presented in the form of a “Base Project” submittal which must comply with Planning Department’s Plan Submittal Guidelines (architectural details will not be required for Base projects).

Requests for additional density afforded by the State Density Bonus law would not require a separate entitlement process. If the Base Project did not require an entitlement, then the Bonus Project would not trigger an entitlement for the sole purpose of achieving additional density. For example, in an RM-3 District, the permitted density is up to one unit per 400 square feet of lot area. A rezoning would not be required for the additional density achieved through utilizing the State Density Bonus law.

It is important to note that the density bonus is allowed without consideration of necessity or financial feasibility. A Project Sponsor does not need to justify the need for added density, as the increased density is permitted by State Law. Project Sponsors may pursue entitlements, and concessions or incentives and waivers, without requesting the maximum (or any) density bonus afforded to them under State Law.

WAIVERS

Planning Code Requirements

The Planning Code currently regulates many dimensions of residential development including height, bulk, open space requirements, parking requirements, rear yard requirements, exposure requirements, and many others that can reduce the volume of a building or limit the ability of a project to achieve increased density in a Code compliant manner.

State Density Bonus Law

The State Density Bonus Law offers Project Sponsors an **unlimited** number of waivers from the Planning Code if they are necessary to achieve the increased density conferred under the State Law (discussed above) and with the concessions or incentives requested (discussed below). There are very limited circumstances where the City may deny a waiver. Under State Law, a waiver may only be denied if it would have a “*specific, adverse impact upon health, safety, or the physical environment*”, or it would have an “*adverse impact on any property listed in the California Register of Historical Resources.*” The City does not have any other discretion or rationale for denying a requested waivers if they are necessary to accommodate additional density or concessions and incentives in the proposed project.

Review and Approval

To determine whether waivers are necessary to construct the density bonus project, Project Sponsors seeking to utilize the State Density Bonus Law must submit two potential projects. The first, a Base Project, would represent a Code-compliant project that requires no variances, modifications, or exceptions. The Base Project would include on-site affordable units pursuant to existing Planning Code requirements (Section 415). The Sponsor would also provide a Density Bonus Project, showing the increased density allowed based on the percentage of on-site affordable units. The Project Sponsor would inform the City of what development standards needed to be waived or reduced to allow for construction of the increased density, or with the concessions and incentives requested.

A common example of a waiver is height. If a 100-unit project is receiving a 35-unit density bonus, height requirements may need to be waived to accommodate the additional 35 units. Project Sponsors can also request waivers from other development standards such as required open space, rear yard, bulk, parking, unit mix requirements, or any other Planning Code requirement that constrains development capacity.

INCENTIVES AND CONCESSIONS

Planning Code Requirements

The Planning Code currently regulates many dimensions of residential development including open space requirements, parking requirements, rear yard requirements, exposure requirements, and various land use limitations. In some cases exceptions, modifications, variances, and other exemptions are possible.

State Density Bonus Law

The State Law offers Project Sponsors the right to request one, two, or three incentives or concessions “*that are required to provide for affordable housing costs.*” A concession or incentive can be a reduction in site development standards, or a modification of zoning code requirements, approval of mixed-use zoning, or other regulatory concessions or incentives that “*result in identifiable, financially sufficient, and actual cost reductions.*”

The number of incentives and concessions granted are based on the amount and level of affordability:

One Incentives or Concessions	Two Incentives or Concessions	Three Incentives or Concessions
5% very low income in Base Project	10% very low income in Base Project	15% very low income in Base Project
10% low income in Base Project	20% low income in Base Project	30% low income in Base Project
10% moderate income	20% moderate income	30% moderate income

State Law defines concessions or incentives as proposals that “result in identifiable, financially sufficient and actual cost reductions.” A city may deny a requested concession or incentive if makes written findings, based on substantial evidence, that the concession or incentive is not required in order to provide for affordable housing costs or rents. In addition, similar to waivers, the only discretion that the Planning Commission has to disapprove an incentive or concession is if it would have a “*specific, adverse impact upon health, safety, or the physical environment*”, or it would have an “*adverse impact on any property listed in the California Register of Historical Resource’s.*”

Review and Approval

The Project Sponsor must provide a written statement describing the requested concessions and incentives. The City may deny the requested incentives or concessions if the request would: 1) harm the public, 2) harm historic resources, or 3) not reduce costs for the project. When the Project Sponsor submits a base project and density bonus project, they should include the requested concessions in the density bonus proposal. Should the Department have reason to believe that a requested incentive would harm the public, impact a resource, or would not reduce the costs of the project; the Department may request verification from the Project Sponsor. Verification could include a site specific or general analysis of the costs savings to a project available through the requested incentive or concession. For example, a reduced parking requirement is known to reduce costs by an average of \$60 to \$150,000 dollars per parking space (depending on construction type). In some cases, where the financial benefit of a requested concession is less clear, the Project Sponsor may be required to submit financial information or a pro-forma statement to the Department as evidence that the requested incentives or concessions result in an “identifiable, financially sufficient, and actual cost reduction”. The financial analysis shall address two scenarios: 1) the Bonus Project with the density bonus units and the affordable units, and 2) the Bonus Project incorporating the aforementioned plus the requested incentives and concessions. The information submitted must show the actual cost reduction or financial benefit achieved through the incentive or concession. The financial analysis submitted by the Project Sponsor may be evaluated by a qualified third party consultant.

IMPLEMENTATION APPROACH

The implementation approach for State Density Bonus Projects includes review of the three types of benefits conferred by State Law, as listed above: 1) density, 2) waivers, and 3) incentives and concessions. Projects that were subject to specific entitlements without the density bonus would continue to secure that specific entitlement with the density bonus. For example, a project that would require a Large Project Authorization approval by the Planning Commission because the base project is over 25,000 sf would continue to require approval by the Planning Commission if it moves forward as a State Density Bonus project. Although the process would remain the same in this example, the Planning Commission would not be able to reduce the density of the project and the Commission would be limited in their ability to deny the waivers, incentives, and concessions, which may have otherwise been assessed by the Commission through the Large Project Authorization.

State Density Bonus requests will not be reviewed through the Special Use District (SUD) procedures and the density bonus, in and of itself, will not require a re-zoning or map amendment. For example, if a State Density Bonus project seeks a height waiver in a 40-X Height and Bulk District to accommodate a project of 60-feet in height, a map amendment will not be required.

Pursuant to recent legislation (Board File 150914/007-16) that amended the Planning Code by eliminating certain Conditional Use requirements under Section 309, and Section 329 review for 100% affordable housing projects, these 100% affordable projects may be processed at a Department level, without a required Commission hearing. However, Neighborhood Notification requirements remain in effect, as does the potential for a Commission hearing via a request for Discretionary Review. If a 100% affordable housing project intended to utilize the State Density Bonus Law, it may not receive Planning Commission review unless a Discretionary Review was filed. It should be noted that the Planning Commission's authority when reviewing the Discretionary Review application would be limited by the State Density Bonus Law (as described above).

The State Law contemplates that project sponsors and the City will meet to discuss specific proposals for concessions and incentives. However, the City may not deny a requested concession or incentive unless it makes the findings outlined above.

AFFORDABLE HOUSING BONUS PROGRAM AND STATE DENSITY BONUS LAW

The proposed Affordable Housing Bonus Program ordinance currently awaits consideration by the San Francisco Board of Supervisors. This proposed Ordinance includes four programs – two of the programs are intended to implement the State Density Bonus Law – the State Analyzed Program and the Individually Requested program. The State Analyzed Program was developed based upon analysis conducted by the Department and consultants. Projects could only utilize the State Analyzed program if the project complied with an express menu of incentives, concessions and waivers, including height. The menu presents Department-supported options that are intended to maximize a project's compatibility with the City's existing character, while providing increased density and reductions in development standards as required by law

The Individually Requested Program of the AHBP provides a separate application and process for projects that do not utilize the menu, or otherwise do not comply with the requirements of the State Analyzed program. The Individually Requested Program's application and process require project-specific individual analysis – fairly consistent with the analysis described in this memorandum.

REQUIRED COMMISSION ACTION

This is an informational item only and does not require any Commission action.

RECOMMENDATION: No Planning Commission action required. Informational item.

Attachments:

State Density Bonus Law