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CALIFORNIA’S AB 2345 EXPANDS AND ENHANCES DENSITY BONUS LAW DEVELOPMENT INCENTIVES

To Our Clients and Friends:

For more than forty years, California’s Density Bonus Law (Government Code Section 65915 *et seq.*) has been a mechanism to encourage developers to incorporate affordable units within a residential project in exchange for density bonuses and relief from other base development standards. Effective as of January 1, 2021, Assembly Bill 2345 (“AB 2345”) amends the Density Bonus Law to expand and enhance development incentives for projects with affordable and senior housing components. AB 2345 is modeled after the City of San Diego’s Affordable Homes Bonus Program, and is intended to be another tool to address the state’s ongoing housing crisis.

Under the Density Bonus Law, developers are entitled to a density bonus corresponding to specified percentages of units set aside for very low income, low-income, or moderate-income households. Prior to 2021, the Density Bonus Law permitted a maximum density bonus of thirty-five percent (35%) for a housing development in which (a) at least eleven percent (11%) of the total units are for very low income households, (b) at least twenty percent (20%) of the total units are for low income households, or (c) at least forty percent (40%) of the total for-sale units are for moderate income households.

AB 2345 amends the Density Bonus Law to increase the maximum density bonus from thirty-five percent (35%) to fifty percent (50%). To be eligible for the maximum bonus, a project must set aside at least (i) fifteen percent (15%) of total units for very low income households, (ii) twenty-four percent (24%) of total units for low income households, or (iii) forty-four percent (44%) of for-sale units for moderate income households. Levels of bonus density between thirty-five percent (35%) and fifty percent (50%) are granted on a sliding scale.

Maximum Density Bonus Tiers		
	<i>Pre-2021 Density Bonus Law</i>	<i>AB 2345 Amendments</i>
Very Low Income	35% bonus for 11% set aside	50% bonus for 15% set aside
Low Income	35% bonus for 20% set aside	50% bonus for 24% set aside
Moderate Income	35% bonus for 40%* reserve	50% bonus for 44%* reserve
*For-sale units only		

As a state-level regulation, projects satisfying the requirements of the Density Bonus Law are eligible for the corresponding bonus notwithstanding potential resistance to densification efforts at the local

level. Further, as localities continue to adopt inclusionary housing requirements, it is important to note that units required pursuant to a local inclusionary zoning ordinance also qualify as affordable units for purposes of meeting the requirements on the Density Bonus Law.

In addition to the density bonuses outlined above, projects satisfying the requirements of the Density Bonus Law are entitled to one or more development incentives or concessions that will result in identifiable and actual cost reductions to provide for affordable housing costs, so long as the incentive or concession will not have specific unmitigable adverse impacts upon public health and safety, the physical environment or on historic properties, and the incentive or concession is not contrary to state or federal law. The local approving government has the burden of proof in defending the denial of a requested concession or incentive. These additional incentives or concessions could include any of the following:

1. A reduction in site development standards or a modification of zoning or architectural design requirements that exceed minimum building standards approved by the California Building Standards Commission (*e.g.* a reduction in setback and square footage requirements);
2. Approval of mixed-use zoning; or
3. Any other regulatory incentives or concessions that would result in identifiable and actual cost reductions. The number of incentives or concessions to which a project is entitled is based on the percentage of affordable units set aside. AB 2345 amends the Density Bonus Law to decrease the set aside requirement for low income households as shown in the table below.

Incentives and Concessions Tiers			
<i>Number Entitled</i>	<i>Very Low Income</i>	<i>Low Income</i>	<i>Moderate Income</i>
1	5%	10%	10%
2	10%	20% → 17%	20%**
3	15%	30% → 24%	30%**
** applies to a common interest development, as defined in Section 4100 of the Civil Code			

In addition to the incentives and concessions summarized above, a local government is prohibited from applying any development standard that would physically preclude construction of the development with the density bonus and incentives and concessions to which the project is entitled.

Further, the Density Bonus Law provides that, upon a developer’s request, a locality must utilize state-mandated parking ratios (inclusive of handicapped and guest parking) for qualifying projects. AB 2345 amends these parking ratios to decrease requirements for two and three bedroom units, as shown in the table below.

Maximum Parking Requirements	
<i>Rooms</i>	<i>Number of spaces required</i>
Studio / 1 bedroom	1 space
2 bedroom / 3 bedroom	2 space → 1.5 space
4 bedroom	2.5 space

Finally, AB 2345 amends the Density Bonus Law to provide local governments discretion to grant additional waivers or reductions in development standards for projects located within a one-half mile radius of a major transit stop and provide further reduced parking standards for eligible residential projects that (i) provide unobstructed access to a major transit stop or (ii) are restricted to for-rent housing for individuals who are 62 years of age or older with paratransit service or unobstructed access to a fixed bus route that operates at least eight (8) times per day.



Gibson Dunn's lawyers are available to assist with any questions you may have regarding these issues. For additional information on these recent changes to the Density Bonus Law, please contact any member of the firm's Real Estate or Land Use practice groups, or the following authors:

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