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## MEMORANDUM

DATE: October 28, 2019

FROM: Colin Parent, Circulate San Diego

SUBJECT: Bill Proposal for Enhancements to the California Density Bonus Law

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### 1. Short Summary:

This document proposes a bill for the California Legislature to enhance the benefits provided under California Density Bonus Law if developers include higher percentages of deed-restricted affordable homes.

The proposal is to mirror the relatively modest policy enhancements recently adopted by the City of San Diego, which have seen dramatic increases in production for both market-rate and affordable homes.

### 2. Background:

California Density Bonus Law provides a variety of benefits to developers that choose to deed-restrict a percentage of new multi-family homes as affordable. Ca. Gov. Code Sec. 65915. The benefits are offered at a sliding scale providing more benefits, depending on how many units are deed-restricted, and how deeply affordable they are to be maintained. The benefits include (1) a bonus above allowable base density, and (2) a number of "incentives," which are concessions from local development standards.

Developers are entitled under Density Bonus Law to receive up to a maximum of a 35 percent bonus of allowed density, when they provide 11 percent of their units as affordable to very low income households. They can receive the same bonus by dedicating even more units at higher income levels. Density Bonus law also allows up to three "incentives," depending on how many units are deed-restricted.

In 2016, the City of San Diego enhanced its State Density Bonus program, and allowed developers to receive up to a 50 percent bonus if they provide up to 15 percent of their units to very low income households.

San Diego also provided developers with higher numbers of incentives, allowing up to five incentives when developers provide up to 15 percent of units as affordable to very low income households.

The policy in San Diego was supported by a broad range of ideologically diverse entities, including the San Diego Housing Federation, Circulate San Diego, the Climate Action Campaign, REALTORS, the Building Industry Association, and the San Diego Chamber of Commerce.<sup>1</sup>

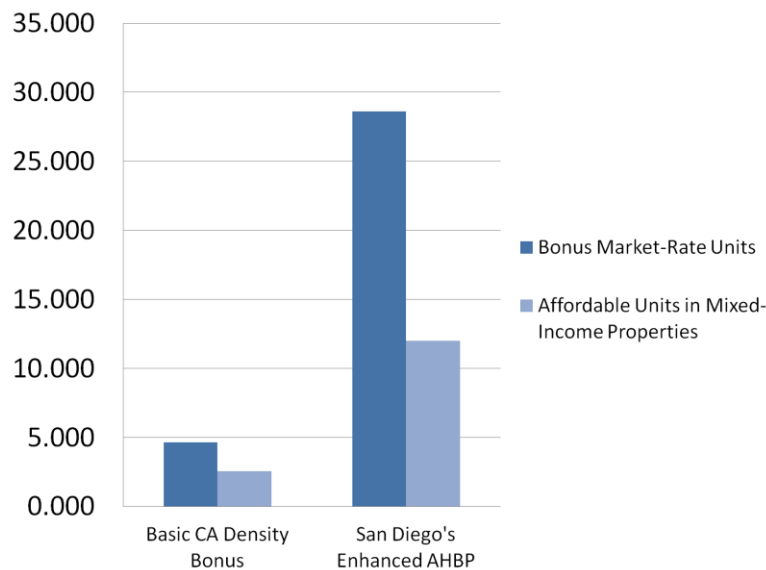
### 3. Impact of San Diego’s Enhanced Density Bonus Program

Preliminary data collected and published by Circulate San Diego shows that San Diego’s enhanced program resulted in substantially larger application figures for mixed-income developments building both market-rate and affordable homes. The initial report was titled “Early Win for Affordable Homes Bonus Program,” and was [published online](#).<sup>2</sup>

An analysis of data from the San Diego Housing Commission shows that compared to the past performance of State Density Bonus law in San Diego, applications for the new enhanced density bonus program are expected to produce:

- 900 percent increase per month for projects applying to use the program.
- 473 percent increase per month for deed-restricted affordable units.
- 453 percent increase per month for combined affordable and market-rate homes.

### *Bonus Home Production Per Month*



<sup>1</sup> Policy Letter, “Coalition of Supporters for Affordable Homes Bonus Program,” June 16, 2016, available at <http://www.circulatesd.org/affordablehomesbonus>.

<sup>2</sup> Report: Early Win for Affordable Homes Bonus Program (October 18, 2017), available at <http://www.circulatesd.org/ahbpreport>.

A new data set on projects entitled by San Diego's enhanced bonus program will soon be published by Circulate San Diego, and that data will show similar trends. The program also is being used by 100 percent affordable developers to build more deed-restricted units with limited available subsidies.

#### **4. Proposed Bill:**

This legislative proposal is to update California Density Bonus law to provide the same enhancements that the City of San Diego does, statewide.

In short, developers that dedicate 15 percent of their base density units as affordable, will receive a 50 percent bonus, and up to five incentives. Developers could receive similar benefits if they provide even more units at higher income levels, all on a sliding scale.

The statutory changes would only need to adjust the density bonus tables, and the language detailing the number of incentives that are available. Like with San Diego, these changes would require only minor departures from the existing policy language, but can be expected to provide substantial improvements to housing production. The few small changes to the statute are provided below.

The additional benefits would only be available for developments that choose to build more affordable units than they are currently incentivized to do. This will create a "win-win" between market-rate developers and advocates for more deed-restricted affordable homes. Also, the benefits being proposed are still less than the 80 percent bonus available under the City of Los Angeles' Transit Oriented Communities program, so this proposal is not likely to undermine that local policy.

Recent legislative successes around enhancing Density Bonus Law may make further enhancements politically easier to adopt. Density Bonus Law already includes strong anti-displacement controls. Projects using density bonus are already entitled to parking reforms, and other policies intended to promote transit-oriented-development consistent with state-wide policies to reduce vehicle miles traveled. The California legislature recently enhanced the California Density Bonus Law as late as 2015 with AB 744, so many legislators and their staff will be familiar with the program and already on-record as supporting its enhancement.

This bill proposal would have a positive impact on housing affordability throughout the state, while also providing an easier political path to adoption than some more dramatic proposal to amend California land use laws. Nothing about changing Density Bonus Law would preclude the adoption and implementation of more ambitious housing proposals in the legislature.

#### **5. Conclusion**

The experience by City of San Diego with its density bonus enhancements could provide benefits elsewhere, were it adopted state-wide. Making a few small and politically viable changes to California's density Bonus law can create large housing benefits throughout the state.

**Appendix: Proposed Statutory Changes:**

**California Government Code Sec. 65915(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~~ 12 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 that include at least 31 percent of the total units for lower income households, at least 13 percent for very low income households, or at least 31 percent for persons and families of moderate income in a common interest development.

(E) Five incentives or concessions for projects that include at least 33 percent of the total units for lower income households, and at least 15 percent for very low income households, or at least 33 percent for persons and families of moderate income in a common interest development.

**California Government Code Sec. 65915(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:

<b>Percentage Low-Income Units</b>	<b>Percentage Density Bonus</b>
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
<u>21</u>	<u>38.75</u>
<u>22</u>	<u>42.5</u>
<u>23</u>	<u>46.25</u>
<u>24</u>	<u>50</u>

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

<b>Percentage Very Low Income Units</b>	<b>Percentage Density Bonus</b>
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
<u>12</u>	<u>38.75</u>
<u>13</u>	<u>42.5</u>
<u>14</u>	<u>46.25</u>
<u>15</u>	<u>50</u>

(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.

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

<b>Percentage Moderate-Income Units</b>	<b>Percentage Density Bonus</b>
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

<u>36</u>	<u>31</u>
<u>37</u>	<u>32</u>
<u>38</u>	<u>33</u>
<u>39</u>	<u>34</u>
<u>40</u>	<u>35</u>
<u>41</u>	<u>38.75</u>
<u>42</u>	<u>42.5</u>
<u>43</u>	<u>46.25</u>
<u>44</u>	<u>50</u>

(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.