



# MEMORANDUM

## TOWN OF PORTOLA VALLEY

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**TO:** Chair and Members of the Planning Commission

**FROM:** Leigh F. Prince, Legal Counsel

**DATE:** January 21, 2021

**RE:** State Density Bonus Law

### **INTRODUCTION:**

This memorandum is intended to provide a high-level overview of the State Density Bonus Law and does not address all of the details and nuances of this complex law. State Density Bonus Law (Government Code Section 65915) was adopted by the State of California in 1979 as has been amended over the years to encourage applicants to include lower income housing units in developments by providing increased residential density over the otherwise allowable maximum, incentives and waivers in exchange for the provision of affordable units. This memorandum is up to date through Assembly Bill 2345 which became effective January 1, 2021. State Density Bonus Law applies to all cities and towns in the State of California and requires cities to adopt an implementing ordinance. The Town of Portola Valley adopted an implementing ordinance (Municipal Code Chapter 18.17) in 2014. Compliance with State Density Bonus Law is mandatory and preempts any inconsistent local regulation.

### **DISCUSSION:**

State Density Bonus Law requires local governments to grant a density bonus and one or more incentives when an applicant constructs a housing development (five or more units) that will contain at least one of the following:

1. Ten percent of the total units for low income households.
2. Five percent of the total units for very-low income households.
3. At least 35 senior citizen housing units.
4. Ten percent of the total units in a common interest development for persons and families of moderate income.
5. Ten percent of the total units of a housing development for transitional foster youth, disabled residents or homeless.

6. Twenty percent of the total units for lower income students in a student housing development.

The total number of units for the purpose of calculating the percentages described above does not include units added by a density bonus. The lower income units are required to be restricted for a minimum of 55 years.

### **Density Bonus:**

The percentage density bonus to which an applicant may be entitled for the provision of low income, very-low income and moderate income units is detailed in the tables found in Government Code Section 65915(f). The percentage density bonus to which an applicant would be entitled varies based on the percentage of lower income units provided and the affordability level. The more lower income units or the deeper the affordability, the greater the density bonus. All density calculations resulting in fractional units are rounded up to the next whole number. The maximum percentage density bonus provided for in any of the tables is 50 percent.

The following are a few examples from the State Density Bonus Law:

- 10 percent low income units → 20 percent density bonus
- 10 percent very-low income units → 32.5 percent density bonus
- 40 percent moderate income units → 35 percent density bonus
- 25 percent low income units → 50 percent density bonus

A density bonus means a density increase over the otherwise allowable maximum residential density. Thus, through the application of State Density Bonus Law, an applicant may exceed the maximum residential density identified in the zoning code.

### **Incentive or Concession:**

In addition to the density bonus, State Density Bonus Law provides for incentives or concessions for the provision of lower income units. An incentive or a concession is defined as any of the following:

1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that result in identifiable, financially sufficient, and actual cost reductions.
2. Approval of mixed use zoning in conjunction with a housing project.
3. Other regulatory incentives proposed by the applicant that result in identifiable, financially sufficient, and actual cost reductions. An incentive may, but need not be, the provision of a direct financial incentive such as the waiver of fees.

The number of incentives or concessions an applicant is entitled to receive depends on the percentage of low, very-low or moderate income units provided as follows:

1. One incentive for projects that include at least 10 percent of the total units for low or moderate income households, or at least five percent for very-low income units.

2. Two incentives for projects that include at least 17 percent of the total units for low or moderate income households, or at least 10 percent for very-low income units.
3. Three incentives for projects that include at least 24 percent of the total units for low or moderate income households, or at least 15 percent for very-low income units.
4. Four incentives for an 100 percent affordable project.

Incentives or concessions requested by the applicant, may only be denied if the town makes a written finding, based upon substantial evidence, of any of the following:

1. The incentive is not required to provide for affordable housing costs as defined in Health and Safety Code Section 50052.5 which defines affordable housing costs for very-low, low and moderate income housing.
2. The incentive would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment or on any real property listed in the California Register of Historical Places. Government Code Section 65589.5 defines a specific adverse impact as a significant, quantifiable, direct and unavoidable impact, based on objective written public health or safety standards, policies or conditions as they existed at the time the application was complete.
3. The incentive would be contrary to federal or state law.

The town bears the burden of proof and there must be substantial evidence in the record of the basis for denial.

**Waivers:**

In addition to one or more incentives, an applicant may be entitled to waivers. A waiver is a reduction in a development standard (e.g. height, setback requirement, etc.) that if applied without modification would physically preclude construction of the proposed project. There is no limit on the number of development standard waivers. Waivers shall be granted unless the town finds that the waiver would have a specific adverse impact upon public health and safety or the physical environment or any property listed on the California Register of Historical Places or would be contrary to federal or state law. A waiver neither reduces nor increases the number of incentives to which the applicant is entitled.

**Parking:**

An applicant may request to apply the following parking ratios identified in State Density Bonus Law to a proposed project:

1. Zero to one bedroom, one onsite parking space.
2. Two to three bedrooms, two onsite parking spaces.
3. Four or more bedrooms, two and one-half parking spaces.

If the proposed project provides the maximum percentage low income or very-low income units or is located within one-half mile of a major transit stop and there is

unobstructed access to the transit stop, the maximum parking ratio inclusive of handicapped and guest parking is 0.5 spaces per bedroom. The total number of required spaces is rounded up to the next whole number. Onsite parking may be provided through tandem or uncovered parking spaces, but not on-street parking.

**Failure to Comply:**

If a town denies a density bonus, incentive or development standard waiver for a proposed project in violation of the State Density Bonus Law, an applicant may bring a writ of mandate requesting that the court order the town to grant the density bonus, incentive, or development standard waiver and approve the project. If the court determines that the town denied the density bonus, incentive or development standard waiver in violation of the law, the court may order the project with the density bonus, incentive or development standard waiver approved and the town will have no more discretion related to project approval. Furthermore, if the court determines that the town denied the density bonus, incentive or development standard waiver in violation of State Density Bonus Law, the court will award the developer reasonable attorneys' costs and fees.

cc: Laura Russell, Planning & Building Director  
Cara Silver, Town Attorney