



OFFICE OF THE CITY ATTORNEY
ROCKARD J. DELGADILLO
CITY ATTORNEY

REPORT NO. R 0 8 - 0 0 0 9
JAN 1 5 2008

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTIONS 12.22, 12.24, 14.00 AND 19.01
OF THE LOS ANGELES MUNICIPAL CODE TO IMPLEMENT A DENSITY
BONUS PROGRAM, AS REQUIRED BY STATE LAW**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 05-1345

Honorable Members:

We are transmitting to you for your action, approved as to form and legality, a final draft ordinance. This draft ordinance amends the provisions of the Los Angeles Municipal Code so as to implement the state density bonus law.

Charter Findings

Pursuant to Charter Section 559, the Director of Planning has disapproved the draft ordinance on behalf of the City Planning Commission and recommended that the City Council not adopt it. Should the City Council adopt this ordinance, it may comply with the provisions of Charter Section 558 by either adopting the findings of the Director of Planning as set forth in her report dated January 14, 2008, or by making its own findings.

CEQA Findings

Regarding a finding pursuant to the California Environmental Quality Act (CEQA) and as set forth in a letter from the Director of Planning to the City Attorney's Office dated January 2, 2008, the Director of Planning recommends that the City Council

JAN 1 6 2008

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adopt a General Exemption for this project, Notice of Exemption No. ENV-2008-87-CE, pursuant to State CEQA Guidelines Section 15061(b)(3) and City CEQA Guidelines Art. II, Sec. 1, because it can be seen with certainty that codifying the procedures for implementing the state density bonus law will not have a significant effect on the environment.

Background

On April 4, 2006, your Planning and Land Use Management Committee (PLUM) approved the ordinance and recommended that it be adopted by the City Council with several modifications to the Commission's June 9, 2005, action.

On August 1, 2006, the Housing, Community, and Economic Development Committee (HCED) concurred with the PLUM action of April 4, 2006, and requested that the City Attorney draft an ordinance consistent with the amendments approved by PLUM.

The City Attorney did so and presented the draft ordinance to PLUM and HCED, meeting jointly, on November 6, 2007. The joint committee directed the City Attorney to draft an ordinance consistent with additional amendments approved by the joint committee and present that draft ordinance to the City Council. This final draft ordinance incorporates the changes recommended by the joint committee.

Summary of Ordinance Provisions

This ordinance makes changes to the existing density bonus provisions in the Code so as to implement the changes to the state density bonus law (SB 1818), which requires cities to permit increased density for market rate housing projects that include a percentage of the units "set aside" as affordable to a certain income group.

In January 2005, SB 1818 took effect. SB 1818 amended Government Code Section 65915 and significantly changed the State's existing density bonus program by lowering the number of affordable units that are required to be set aside in order to qualify for a density bonus. Projects may now qualify for a base density bonus of 20% (rather than the previous 25%), and the bonus may be increased to a maximum of 35% if additional affordable units are included.

The new law also requires cities to grant up to three "incentives" requested by an applicant, depending upon the percentage of affordable units and the target income group. An incentive is defined in the law as a deviation from any zoning or development regulation. The City must grant the incentive unless it can make one of the following findings: 1) the incentive is not required in order to provide for affordable housing costs or rents; 2) the incentive has a specific adverse impact upon health, safety or the

physical environment; 3) the incentive has an adverse impact on any real property that is listed in the California Register of Historical Resources.

The draft ordinance specifies a “Menu of Incentives” that includes deviations from the Zoning Code typically requested by housing developers. Applicants can also request incentives that are “off the Menu” but the process and notice requirements are more extensive for these requests. The intent is to implement the law in a way that balances the need for affordable housing with the integrity of local planning and zoning in maintaining livable neighborhoods.

The joint committee added language to Paragraph (g)(2)(i) c (ii) which would enlarge the City’s ability to deny an incentive or concession to include a specific adverse impact on real property listed “. . . in the City of Los Angeles list of Historical-Cultural Monuments, or is a contributing structure in a designated Historic Preservation Overlay Zone” The state density bonus law allows cities to deny an incentive or concession only on the basis of an impact on real property “. . . listed in the California Register of Historical Resources” Thus, enlarging a city’s ability to deny an incentive or concession to include impacts on historical or cultural resources recognized only by that city, but not the state, would appear to violate the state law.

In our opinion, it would not violate the state law to so enlarge the City’s ability to deny an “on Menu” incentive or concession. The reason is that the state law does not require cities to offer on Menu incentives/concessions and thus it would not violate state law for a city to qualify such incentives/concessions. Also, even if a developer is denied an on Menu item, the developer still has the right to request the incentive or concession through the “off Menu” process. Therefore, we have modified the proposed language to apply to only on Menu incentives/concessions.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Departments of Housing and Building and Safety. The draft ordinance incorporates those changes that are acceptable to all the departments.

Fee Notice Requirement


The attached final draft ordinance contains fees. Prior to adopting a new fee or increasing an existing fee, the City Council must conduct a public hearing concerning the matter, as required by Government Code Section 66018. Notice of the time and place of the meeting at which the hearing will be held, including a general description of the matter to be considered, must be published in accordance with Government Code Section 66016 and 6062a. After conducting the hearing, the City Council should determine whether the amounts of the fees contained in the ordinance are appropriate.

The City Council may impose these fees so long as the fees do not exceed the expected cost of implementing this City program.

If you have any questions, please feel free to contact Deputy City Attorney Kenneth Fong at 213.978.8064. He or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

ROCKARD J. DELGADILLO, City Attorney

By 
CLAUDIA CULLING *by ssc*
Special Counsel – Municipal

CC/KTF:zra
Transmittal

CITY OF LOS ANGELES
CALIFORNIA



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**City Attorney
Land Use/Real Property
Received**

JAN 14 2008

January 2, 2008

The Honorable Rockard J. Delgadillo
City Attorney
Room 800, City Hall East
200 North Main Street
Los Angeles, CA 90012

ATTN: Kenneth Fong, Deputy City Attorney

Dear Mr. Fong:

I am writing to provide you with information, pursuant to the California Environmental Quality Act (CEQA), regarding the environmental impact of the proposed implementing ordinance for the State density bonus law, SB 1818, that you are drafting. Amongst its major provisions, the amended State law requires cities to grant density bonuses and up to three incentives (defined as deviations from the Zoning Code) when a requisite amount of affordable housing is included as part of a housing project. The law requires that "all cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented."

The ordinance you are drafting is that ordinance required by SB 1818 in Govt. Code Section 65915, which became effective on January 1, 2005. Prior to this most recent amendment, the State density bonus law had been in effect since 1980 (with several intervening modifications), and the City has had an implementing ordinance for the State density bonus law since December 30, 1995. The City subsequently amended its implementing ordinance, effective January 15, 2003, to implement State law and other changes.

The proposed ordinance amends the previously adopted density bonus implementing ordinances (Ordinance Numbers 170,764 and 174,995) so that the City's procedures are in compliance with the amended State law. While the previous State law and City ordinances also permitted "incentives" in conjunction with density bonus projects, the amended law requires a specified percentage of affordable housing units that must be provided in order to receive incentives, and includes a maximum of three incentives. The proposed ordinance establishes new procedures for the filing and consideration of applications for density bonus requests, including procedures for considering requests for "incentives," as established in the amended State law. The implementing ordinance creates two sets of "incentives" (on menu and off menu) and filing procedures for each.

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January 2, 2008

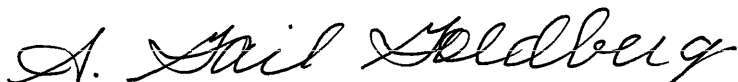
The implementing ordinance will not have a significant impact on the environment because it merely establishes the procedures for filing and reviewing requests for such projects. These projects must be reviewed and considered pursuant to the State law, regardless of how the City opts to implement the various provisions. As such, the substantive application of SB 1818 is already provided for in the State law and is already in effect.

Also, when measured against the baseline before SB 1818 went into effect in 2005, the City's implementing ordinance would not have a significant effect. Since the law went into effect on January 1, 2005, through October, 2007, 56 projects have used the density bonus provisions (i.e., executed covenants for the required affordable units) which represents only 2% of all multi-family residential projects for which permits have been issued in the City. Furthermore, these density bonus projects are dispersed throughout the 464 square miles of the City, and have not been concentrated in any one part of the City (see map attached).

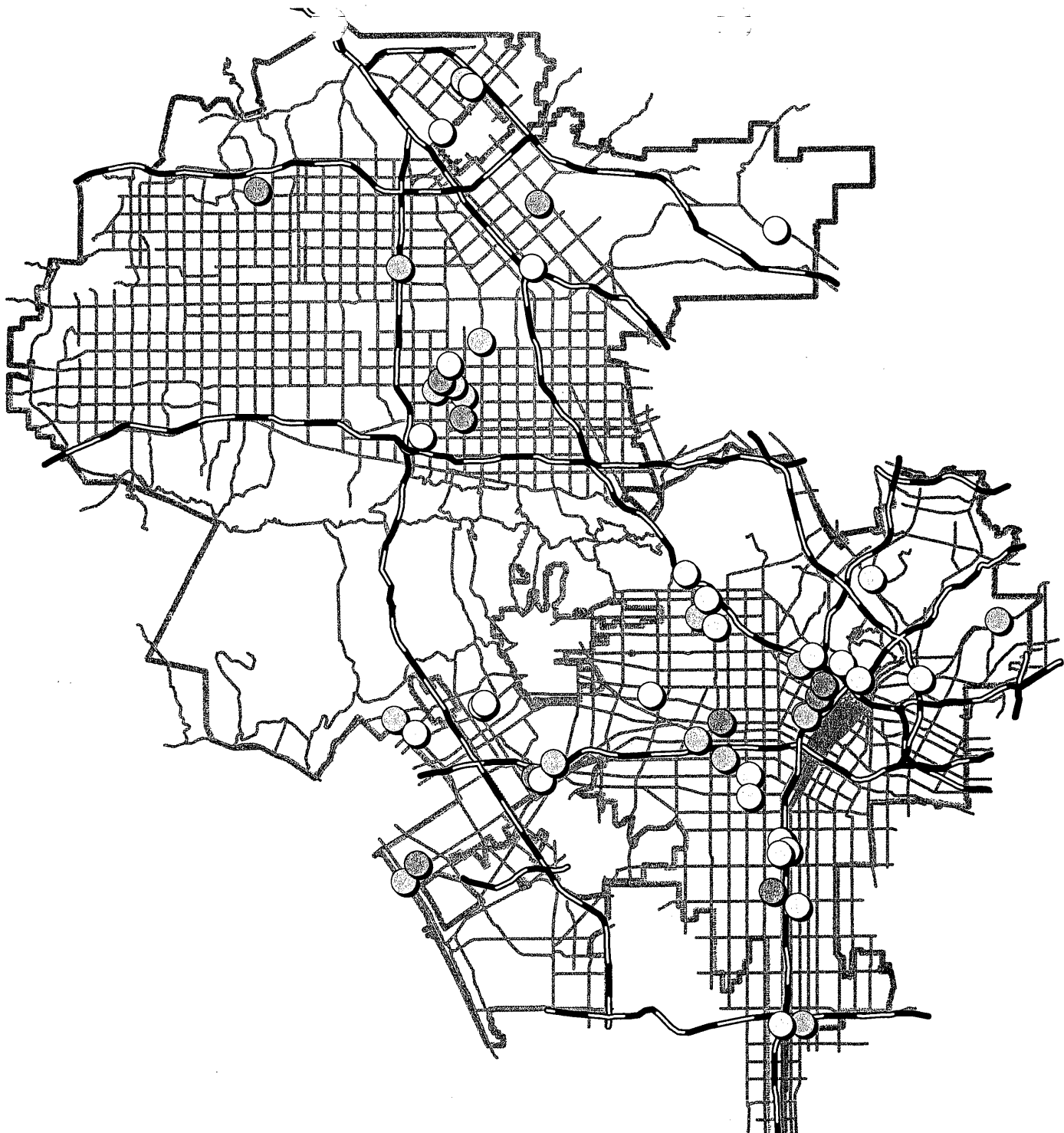
Additionally, the implementing ordinance requires that each project requesting a density bonus along with an incentive (except those projects in which the only deviation from the City's zoning regulations is compliance with the parking space requirements contained in the State law itself) will be subject to CEQA and reviewed on a case-by-case basis to determine whether or not the project has any impacts on the environment in which the project is located. Until projects are filed on a specific site, it would be too speculative to determine which 2% of the city's multi-family residential or commercially zoned parcels might utilize the density bonus provisions and whether or not any environmental impacts would be created, based on the previously-cited dispersal of projects using SB 1818 since the law went into effect.

SB 1818 has been in effect since January 1, 2005. As required by this law, the City has been accepting, reviewing, and making determinations regarding density bonus applications pursuant to the provisions of the State law since that date. Based on three years of experience, it can be seen with certainty that codifying procedures to implement the existing State law will not have a significant effect on the environment.

Sincerely,



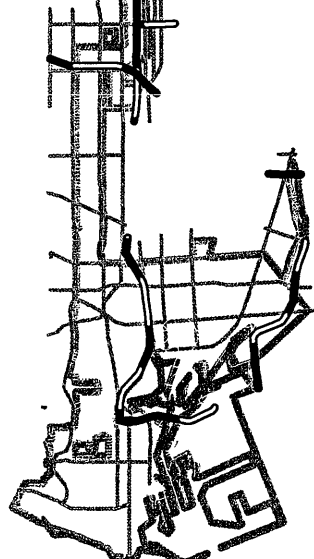
S. GAIL GOLDBERG, AICP
Director of Planning



**CITY OF LOS ANGELES
SB1818 DENSITY BONUS PROJECTS
(1/1/2005 - 10/25/2007)**

- 2007 - 26 PROJECTS
- 2006 - 10 PROJECTS
- 2005 - 20 PROJECTS

SOURCE: LAHD LAND USE REPORT
PROJECTS IDENTIFIED BY YEAR OF EXECUTED COVENANT



DEPARTMENT OF
CITY PLANNING

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January 14, 2008

CITY PLAN CASE NO: 2005-1101-CA
COUNCIL FILE NO: 05-1345
COUNCIL DISTRICTS: ALL

The Honorable Rockard J. Delgadillo
City Attorney
Room 800
City Hall East
200 North Main Street
Los Angeles, CA 90012

ATTN: Kenneth Fong
Deputy City Attorney III, Land Use Division

**AN ORDINANCE AMENDING SECTIONS 12.22, 12.24, 14.00 AND 19.01 OF THE
LOS ANGELES MUNICIPAL CODE TO IMPLEMENT A DENSITY BONUS
PROGRAM, AS REQUIRED BY STATE LAW**

Pursuant to the November 6, 2007 action of the Planning and Land Use Management (PLUM) Committee and the Housing, Community and Economic Development (HCED) Committee of the City Council, the Department of City Planning, in conjunction with your office, has prepared an ordinance pertaining to the subject matter described above.

Apart from technical clarifications and editorial changes, the attached proposed ordinance substantially differs from that which was approved by the City Planning Commission regarding incentives, restricted affordable units for sale and for rent, appeal procedures, and processing fees for the Housing Department.

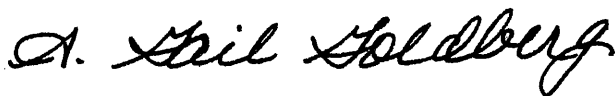
Pursuant to Section 559 of the City Charter, I have reviewed the findings of the City Planning Commission's action taken relative to Case No. CPC 2005-1101-CA on June 9, 2005 and on behalf of the Commission, I disapprove the ordinance insofar as it does not conform to the latest action of the City Planning Commission on this matter.



In the event the City Council adopts the PLUM and HCED Committees' recommended ordinance, transmitted herewith are proposed findings, as required by the Charter and the California Environmental Quality Act:

1. In accordance with Charter Section 556, the proposed ordinance is in substantial conformance with the purposes, intent, and provisions of the General Plan. The ordinance implements the goals, objectives, and policies of the Housing Element in particular, in that it encourages the development of affordable housing by complying with State Law that requires the City to adopt an ordinance to implement Government Code Section 65915, the State Density bonus law; and
2. In accordance with Charter Section 558 (b)(2), the proposed ordinance is in conformity with the public necessity, convenience, general welfare and good zoning practice. This ordinance will provide additional opportunities and incentives for the development of affordable housing which is needed throughout the City and will facilitate the production of housing at all income levels throughout the City; and
3. The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) and City CEQA Guidelines Article II, Section 1 because it can be seen with certainty that codifying procedures for filing and reviewing applications submitted pursuant to existing State law, and which are required in order to implement the State law, will not have a significant effect on the environment. In addition, projects filed in accordance with this ordinance will be subject to CEQA and analyzed individually regarding any potential environmental. Categorical Exemption Number ENV 2008-87-CE, has been issued for this ordinance.

Sincerely,



S. GAIL GOLDBERG, AICP
Director of Planning

ORDINANCE NO. _____

An ordinance amending Sections 12.22, 12.24, 14.00 and 19.01 of the Los Angeles Municipal Code to implement a Density Bonus program, as required by State law.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subdivision 25 of Subsection A of Section 12.22 of the Los Angeles Municipal Code is amended to read:

25. Affordable Housing Incentives – Density Bonus

(a) **Purpose.** The purpose of this subdivision is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies.

(b) **Definitions.** Notwithstanding any provision of this Code to the contrary, the following definitions shall apply to this subdivision:

Affordable Housing Incentives Guidelines – the guidelines approved by the City Planning Commission under which Housing Development Projects for which a Density Bonus has been requested are evaluated for compliance with the requirements of this subdivision.

Area Median Income (AMI) – the median income in Los Angeles County as determined annually by the California Department of Housing and Community Development (HCD) or any successor agency, adjusted for household size.

Density Bonus – a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and/or specific plan granted pursuant to this subdivision.

Density Bonus Procedures – procedures to implement the City's Density Bonus program developed by the Departments of Building and Safety, City Planning and Housing.

Disabled Person – a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of an impairment or, anyone who has a record of having that type of an impairment.

Floor Area Ratio – The multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.

Housing Development Project – the construction of five or more new residential dwelling units, the addition of five or more residential dwelling units to an existing building or buildings, the remodeling of a building or buildings containing five or more residential dwelling units, or a mixed use development in which the residential floor area occupies at least fifty percent of the total floor area of the building or buildings. For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded.

Incentive – a modification to a City development standard or requirement of Chapter I of this Code (zoning).

Income, Very Low, Low or Moderate – annual income of a household that does not exceed the amounts designated for each income category as determined by HCD or any successor agency.

Residential Hotel – Any building containing six or more Guest Rooms or Efficiency Dwelling Units, which are intended or designed to be used, or are used, rented, or hired out to be occupied, or are occupied for sleeping purposes by guests, so long as the Guest Rooms or Efficiency Dwelling Units are also the primary residence of those guests, but not including any building containing six or more Guest Rooms or Efficiency Dwelling Units, which is primarily used by transient guests who do not occupy that building as their primary residence.

Residential Unit – a dwelling unit or joint living and work quarters; a mobilehome, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobilehome park, as defined in California Health and Safety Code Section 18214; or a Guest Room or Efficiency Dwelling Unit in a Residential Hotel.

Restricted Affordable Unit – a residential unit for which rental or mortgage amounts are restricted so as to be affordable to and occupied by Very Low, Low or Moderate Income households, as determined by the Los Angeles Housing Department.

Senior Citizens – individuals who are at least 62 years of age, except that for projects of at least 35 units that are subject to this subdivision, a threshold of 55 years of age may be used, provided all applicable City, state and federal regulations are met.

Senior Citizen Housing Development – a Housing Development Project for senior citizens that has at least 35 units.

Specific Adverse Impact – a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Transit Stop/Major Employment Center – Any one of the following:

(1) A station stop for a fixed transit guideway or a fixed rail system that is currently in use or whose location is proposed and for which a full funding contract has been signed by all funding partners, or one for which a resolution to fund a preferred alignment has been adopted by the Los Angeles County Metropolitan Transportation Authority or its successor agency; or

(2) A bus stop located along a Metro Rapid Bus route; or

(3) The boundaries of the following three major economic activity areas, identified in the General Plan Framework Element: Downtown, LAX and the Port of Los Angeles; or

(4) The boundaries of a college or university campus with an enrollment exceeding 10,000 students.

(c) **Density Bonus.** Notwithstanding any provision of this Code to the contrary, the following provisions shall apply to the grant of a Density Bonus for a Housing Development Project:

(1) **For Sale or Rental Housing with Low or Very Low Income Restricted Affordable Units.** A Housing Development Project that includes 10% of the total units of the project for Low Income households or 5% of the total units of the project for Very Low Income households, either in rental units or for sale units, shall be granted a minimum Density Bonus of 20%, which may be applied to any part of the Housing Development Project. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

Percentage Very Low Income Units	Percentage Density Bonus
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5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(2) **For Sale or Rental Senior Citizen Housing (Market Rate).** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 shall be granted a minimum Density Bonus of 20%.

(3) **For Sale or Rental Senior Citizen Housing with Low or Very Low Income Restricted Affordable Units.** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 and includes at least 10% of the total units for Low Income households or 5% of the total units for Very Low Income households shall be granted an additional Density Bonus of 15% more than that permitted in Subparagraph (2) of this paragraph, to a maximum of 35%.

(4) **For Sale Housing with Moderate Income Restricted Affordable Units.** A for sale Housing Development Project that includes at least 10% of its units for Moderate Income households shall be granted a minimum Density Bonus of 15%. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

Percentage Moderate Income Units	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

(5) **Land Donation.** An applicant for a subdivision, parcel map or other residential development approval that donates land for housing to the City of Los Angeles satisfying the criteria of California Government Code Section 65915(h)(2), as verified by the Department of City Planning, shall be granted a minimum Density Bonus of 15%.

(6) **Child Care.** A Housing Development Project that conforms to the requirements of Subparagraphs (1), (2), (3), (4) or (5) of this paragraph and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted either of the following:

(i) an additional Density Bonus that is, for purposes of calculating residential density, an increase in the floor area of the project equal to the floor area of the child care facility included in the project.

(ii) An additional Incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(7) **Fractional Units.** In calculating Density Bonus and Restricted Affordable units, any number resulting in a fraction shall be rounded up to the next whole number.

