

**Summary of Revisions to State Density Bonus Law Under
SB 1818 and SB 435**

SB 1818 (Adopted January 1, 2005):

- A new density bonus category has been added for moderate income for sale condominiums and planned unit developments. Previously, the density bonus program was limited to projects with specified percentages of low and very low income residents and seniors.
- A new density bonus category has also been added for projects that donate land to the City and make at least 10% of units affordable to very low income families.
- The maximum basic state density bonus was increased from 25% to 35%. A sliding scale of density bonus was established from 5% to 35% depending on the proportion of units that will be affordable and at what affordability level they will be provided.
- Rental projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years. Previously, only rental projects that received a second incentive had to meet this requirement and others were only required to maintain affordable units for 10 years. For sale condominiums are not subject to the 30 year affordability requirement. Instead, upon resale, the city may recapture the increased value of the property.
- The city must offer up to three incentives or benefits to all qualifying projects that request incentives. The number of incentives a project is eligible for depends on the number of affordable units being provided and the income group being targeted. Previously, the city was only obligated to offer incentives to projects that preserve affordable units for 30 years whereas those that only preserve affordability for 10 years were not guaranteed an incentive.
- The city must offer an additional incentive to qualifying projects that include on site day care facilities meeting specified conditions.
- Incentives or benefits that must be offered to qualifying density bonus projects have been defined as being regulatory in nature. Applicants may choose what regulation(s) they seek to deviate from. The city must grant the regulatory incentive requested unless specific findings are made that granting the request is not necessary to provide the affordable units or will have adverse impacts on health and safety. Previously, the definition of incentives or benefits was less clear and the city interpreted it to include additional density bonuses beyond those required by the state.

- The revised state law contains language making it easier for applicants to initiate judicial proceedings against a city if the city refuses to grant a requested density bonus or additional incentive to qualifying projects.
- The revised state law limits parking standards that a city can place on projects seeking a density bonus. No more than one space may be required for one bedroom and studio units and no more than two spaces may be required for two and three bedroom units. San Diego's parking regulations are consistent with these limits.
- The revised state law clarifies that the regulatory incentives or benefits that are required to be provided to augment the basic density bonus include parking, height, FAR, and setbacks.
- Density bonus provisions now apply to condominium conversion projects as well as new construction in certain instances.

SB 435 (Adopted June 21, 2005)

- The revised state law clarifies that the percentage of affordability, for purposes of determining the applicable density bonus, is calculated by dividing the number of affordable units by the total number of units before any density bonus is applied.
- SB 435 clarifies that the density bonus for senior developments applies to senior mobilehome parks as well.
- SB 435 alters the density bonus for moderate-income units by expanding it to all common interest developments, as opposed to just condominium or planned developments, and also by requiring that the units be for sale as opposed to rented by the developer.
- SB 435 clarifies that a project applicant can only receive one density bonus and requires the applicant to choose which density bonus he/she is seeking when the project meets the affordability thresholds for more than one income category.
- SB 435 clarifies that upon resale of a moderate-income unit, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless it conflicts with another funding source or law.
- SB 435 clarifies that a local government must grant incentives and concessions only to applicants for a traditional density bonus, not to applicants for a land donation density bonus.