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## DENSITY BONUS FOR 100% AFFORDABLE HOUSING DEVELOPMENTS

AB 1763 provides a new density bonus for 100% affordable housing developments, effective as of January 1, 2020.

As background, the density bonus law generally requires local governments to permit the construction of additional residential units if the development includes units affordable to low- and/or moderate-income households. In addition, developers of qualifying residential projects are entitled to receive certain benefits, including reduced parking requirements, "incentives or concessions," and waivers of certain development standards. The changes to the density bonus law under AB 1763 follow.

### BONUS UNITS

AB 1763 provides an 80% density bonus for projects in which 100% of the units (exclusive of manager's units) are affordable to lower and moderate-income households with a maximum of 20% of the units affordable to moderate-income households and the remainder affordable to lower income households ("100% Affordable Housing Development"). The 80% bonus is calculated on the lower income units. For example, if a project has 20 units of moderate-income units and 80 units of lower income units, the density bonus would be an additional 64 units (80% of 80 units).

Income for lower income households cannot exceed the qualifying limits for low-income households as determined by HCD (approximately 80% of area median income) and incomes for moderate-income households cannot exceed 120% of area median income, also as determined by HCD.

Maximum rents are as follows:

- At least 20% of units must be set at affordable rent meeting the standards in the Health & Safety Code for either lower income or moderate-income units. For lower income units, rents cannot exceed 30% of 60% of area median income. For moderate-income units, rents cannot exceed 30% of 110% of area median income.
- For the remaining units, rents must be set at an amount consistent with the maximum level for a development receiving state or federal low-income tax credits (typically set at 30% of 60% of area median income, but with the introduction of income averaging in tax credit projects, presumably this rent limit may go up to 30% of 80% of area median income).

The income and affordability requirements apply to the total number of units in the project, including the bonus units.

### INCENTIVES AND CONCESSIONS

In addition to the bonus units, 100% Affordable Housing Developments are also entitled to up to 4 incentives and concessions under AB 1763. Incentives and concessions are defined as regulatory incentives resulting in "identifiable and actual cost reductions to provide for affordable housing costs." Examples include reduced setbacks and an increase in height limits.

**100% AFFORDABLE HOUSING DEVELOPMENTS  
WITHIN 1/2 MILE OF MAJOR TRANSIT STOP**

If the 100% Affordable Housing Development is located within 1/2 mile of a major transit stop:

- the local government cannot impose any maximum density; and
- the development can also receive a height increase of up to three additional stories (33 feet).

However, these developments are not eligible to apply for waivers or reductions of development standards that typically are available under the density bonus law, although they are entitled to four incentives and concessions.

A "major transit stop" means an existing rail transit station, a ferry terminal served by either a bus or rail transit service, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak

commute periods, and major transit stops that are included in the applicable regional transportation plan.

**NO PARKING REQUIRED FOR SPECIAL NEEDS AND  
SUPPORTIVE HOUSING DEVELOPMENTS**

Finally, under AB 1763, upon request of the developer, a local government cannot impose any parking requirements on a development that is, exclusive of manager's units, both 100% lower income and 100% special needs or supportive housing.

For more information on this case or any of the issues discussed above, please contact Lynn Hutchins, Barbara E. Kautz, Justin D. Bigelow, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

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