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LAW ALERT

STATE SLASHES PARKING REQUIREMENTS FOR HOUSING NEAR TRANSIT

As of January 1, 2016, developments containing affordable housing and located near transit will be entitled to greatly reduced parking requirements in most communities.

AB 744, an amendment to California's density bonus law (Government Code Section 65915), was signed into law by Governor Jerry Brown on October 9, 2015. The bill provides that, if requested by the developer, no city, county, or city and county may *require* more parking than allowed by the statute unless the local agency has completed its own parking study meeting specific standards. In adopting the bill, the Legislature found that car ownership increases vehicle miles traveled and greenhouse gas emissions; that the cost of parking makes housing less affordable and more difficult to build; and that the high cost of land required to provide parking significantly increases the cost of transit-oriented development. Consequently, the bill limits parking requirements for developments containing affordable housing and located near transit.

Housing Located Near Major Transit Stops. A housing development cannot be *required* to provide more than **0.5 parking spaces per bedroom** if it:

- Includes either 11 percent very low income units or 20 percent low income units; *and*

- Is within one-half mile of a “major transit stop;” *and*
- Has “unobstructed access” to the transit stop.

A “major transit stop” is a site containing a rail station, a ferry terminal served by bus or rail, or the intersection of two or more bus routes that provide service every 15 minutes or less during the morning and afternoon peak commute periods, or a major transit stop included in a regional transportation plan. (Health & Safety Code Section 21155(b).) This definition permits lower parking requirements even where a major transit stop shown in the regional transportation plan has not yet been constructed.

A site has “unobstructed access” if a resident can “access” the stop “without encountering natural or constructed impediments.” It is not clear how access must be obtained (on foot? by car?), but it is possible that some sites that appear to be within a one-half mile radius of a major transit stop may be excluded if the street network does not actually allow a driver or pedestrian to reach the stop in one-half mile.

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Affordable Housing. Any *rental* housing development that is entirely affordable to lower income households, excluding a manager's unit, cannot be required to provide more than **0.5 parking spaces per unit** if it:

- Is within one-half mile of a major transit stop and has unobstructed access to the transit stop;
or
- Is a senior housing development and has either paratransit service or unobstructed access to, and is within one-half mile of, a fixed bus route that operates at least eight times per day.

Special Needs Housing. Any *rental special needs* housing development that is entirely affordable to lower income households, excluding a manager's unit, cannot be required to provide more than **0.3 parking spaces per unit** if it has either paratransit service or unobstructed access to, and is within one-half mile of, a fixed bus route that operates at least eight times per day. "Special needs housing" is any housing designed to serve persons with needs related to mental health, physical or development disabilities, or risk of homelessness. (Health & Safety Code Section 51312.)

Local Parking Studies. Communities may require more parking *only if* they have conducted a study in the last seven years that includes: 1) an analysis of available parking; 2) differing levels of transit access; 3) walkability to transit; 4) potential for shared parking; 5) effect of parking requirements on housing costs; and 6) car ownership rates for lower income households, seniors, and residents with special needs. However, the *most* parking that may be required is that allowed by Section 65915(p)(1) of the density bonus law:

- One space for studio and one-bedroom units;
- Two spaces for two- to three-bedroom units;
and
- Two and one-half spaces for units with four or more bedrooms.

Relationship to Density Bonus Law. Although the new parking provisions are incorporated into state density bonus law, a developer need not request a density bonus nor any other regulatory incentive to take advantage of the lower parking requirements. However, any development that is eligible to use the AB744 parking standards will also be eligible for a 35 percent density bonus and at least two incentives and concessions under state density bonus law. It is possible that the lower parking standards may induce some market-rate developers to provide the affordable units required to qualify for the reduced standards and then seek a density bonus and other incentives in exchange for providing the affordable units.

Amendments to Local Ordinances. This is the second major amendment to state density bonus law in the past two years. Last year's AB2222 increased affordable housing requirements for any project applying for a density bonus on a site where rental housing is occupied by lower income households or was occupied by these households anytime in the past five years. Agencies may wish to consider updating their ordinances to reference these changes, or, at a minimum, modify their application requirements to ensure that their procedures are consistent with the amended statute.

For more information on AB 744 or state density bonus law, please contact Barbara Kautz, Lynn Hutchins, Eric Phillips or any other attorney at Goldfarb & Lipman.