

**ASSEMBLY BILL**

**No. 2280**

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**Introduced by Assembly Members Saldana and Caballero**

February 21, 2008

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An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2280, as introduced, Saldana. Density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for low-, very low, or moderate-income households or qualifying residents.

This bill would require, for qualifying senior citizen housing developments, as defined, that 100% of the units in the development be for senior citizens.

The bill would delete a provision authorizing the seller to retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation, upon resale of low- and very low income units used to qualify for a density bonus, incentive, or concession.

The bill would require a city, county, or city and county to grant a concession or incentive requested by the applicant under existing law unless the city, county, or city and county makes a written finding,

based upon substantial evidence, that, among other things, the concession or incentive would be contrary to state or federal law.

The bill would revise the percentage of lower income, very low income, and moderate income households required for qualification for incentives and concessions.

The bill would delete provisions requiring a court to award the plaintiff reasonable attorney’s fees and costs of suit if the court finds that a refusal to grant a requested density bonus, incentive, or concession, or a waiver or reduction of development standards, is in violation of existing law.

The bill would delete a requirement that an applicant for a waiver or reduction of development standards show that the waiver or modification is necessary to make proposed housing units economically feasible.

The bill would require, as a condition for the granting of a density bonus to a developer in exchange for donating land to a city, county, or city and county for very low income housing, that the local agency identify and approve a source of funding for the very low income units.

The bill would specify that, for the purposes of these provisions of existing law, a concession or incentive does not include elimination or modification of the public review process for development.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65915 of the Government Code is  
 2 amended to read:  
 3 65915. (a) ~~When an applicant seeks a density bonus for a~~  
 4 ~~housing development within, or for the donation of land for housing~~  
 5 ~~within, the jurisdiction of a city, county, or city and county, that~~  
 6 ~~local government shall~~*A city, county, or city and county shall*  
 7 *comply with the provisions of this section. An applicant may seek*  
 8 *a density bonus for a housing development with five or more units.*  
 9 *An application for a density bonus may be submitted only when*  
 10 *the application for the initial discretionary approval for the*  
 11 *housing element is submitted. A city, county, and city or county*  
 12 *shall grant a density bonus in accordance with the provisions of*  
 13 *this section and, when a density bonus is requested, shall also*  
 14 *provide the applicant incentives or concessions for the production*  
 15 *of housing units and child care facilities as prescribed in this*

1 section. All cities, counties, or cities and counties shall adopt an  
2 ordinance that specifies how compliance with this section will be  
3 implemented.

4 (b) (1) A city, county, or city and county shall grant one density  
5 bonus, the amount of which shall be as specified in subdivision  
6 ~~(g)~~ (f), and, *if a density bonus is requested*, incentives or  
7 concessions, as described in subdivision (d), when an applicant  
8 for a housing development ~~seeks and~~ *voluntarily* agrees to construct  
9 a housing development, excluding any units permitted by the  
10 density bonus awarded pursuant to this section, that will contain  
11 at least any one of the following:

12 (A) Ten percent of the total units of a housing development for  
13 lower income households, as defined in Section 50079.5 of the  
14 Health and Safety Code.

15 (B) Five percent of the total units of a housing development for  
16 very low income households, as defined in Section 50105 of the  
17 Health and Safety Code.

18 (C) ~~A~~ *One hundred percent of the total units of a housing*  
19 *development are a senior citizen housing development as defined*  
20 *in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park*  
21 *that limits residency based on age requirements for housing for*  
22 *older persons pursuant to Section 798.76 or 799.5 of the Civil*  
23 *Code.*

24 (D) Ten percent of the total dwelling units in a common interest  
25 development as defined in Section 1351 of the Civil Code for  
26 persons and families of moderate income, as defined in Section  
27 50093 of the Health and Safety Code, provided that all units in the  
28 development are offered to the public for purchase.

29 (2) For purposes of calculating the amount of the density bonus  
30 pursuant to subdivision (f), the applicant who requests a density  
31 bonus pursuant to this subdivision shall elect whether the bonus  
32 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)  
33 of paragraph (1).

34 (3) *For the purposes of this section, “total units” or “total*  
35 *dwelling units” does not include units added by a density bonus*  
36 *awarded pursuant to this section or any local law granting a*  
37 *greater density bonus.*

38 (c) (1) An applicant shall agree to, and the city, county, or city  
39 and county shall ensure, continued affordability of all ~~low- and~~  
40 *low- and* very low income units that qualified the applicant for the

1 award of the density bonus for 30 years or a longer period of time  
2 if required by the construction or mortgage financing assistance  
3 program, mortgage insurance program, or rental subsidy program.  
4 Rents for the lower income density bonus units shall be set at an  
5 affordable rent as defined in Section 50053 of the Health and Safety  
6 Code. Owner-occupied units shall be available at an affordable  
7 housing cost as defined in Section 50052.5 of the Health and Safety  
8 Code.

9 (2) An applicant shall agree to, and the city, county, or city and  
10 county shall ensure that, the initial occupant of the  
11 moderate-income units that are directly related to the receipt of  
12 the density bonus in the common interest development, as defined  
13 in Section 1351 of the Civil Code, are persons and families of  
14 moderate income, as defined in Section 50093 of the Health and  
15 Safety Code, and that the units are offered at an affordable housing  
16 cost, as that cost is defined in Section 50052.5 of the Health and  
17 Safety Code. The local government shall enforce an equity-sharing  
18 agreement, unless it is in conflict with the requirements of another  
19 public funding source or law. The following apply to the  
20 equity-sharing agreement:

21 (A) Upon resale, ~~the seller of the unit shall retain the value of~~  
22 ~~any improvements, the downpayment, and the seller's proportionate~~  
23 ~~share of appreciation.~~ The local government shall recapture any  
24 initial subsidy, *as defined in subparagraph (B)*, and its  
25 proportionate share of appreciation, *as defined in subparagraph*  
26 *(C)*, which ~~amount~~ shall ~~then~~ be used within ~~three~~ *five* years for  
27 any of the purposes described in subdivision (e) of Section 33334.2  
28 of the Health and Safety Code that promote homeownership.

29 (B) For purposes of this subdivision, the local government's  
30 initial subsidy shall be equal to the fair market value of the home  
31 at the time of initial sale minus the initial sale price to the  
32 moderate-income household, plus the amount of any downpayment  
33 assistance or mortgage assistance. If upon resale the market value  
34 is lower than the initial market value, then the value at the time of  
35 the resale shall be used as the initial market value.

36 (C) For purposes of this subdivision, the local government's  
37 proportionate share of appreciation shall be equal to the ratio of  
38 the *local government's* initial subsidy to the fair market value of  
39 the home at the time of initial sale.

1 (d) (1) An applicant for a density bonus pursuant to subdivision  
2 (b) may submit to a city, county, or city and county a proposal for  
3 the specific incentives or concessions that the applicant requests  
4 pursuant to this section, and may request a meeting with the city,  
5 county, or city and county. *A proposal shall be submitted*  
6 *concurrently with the application for a density bonus.* The city,  
7 county, or city and county shall grant the concession or incentive  
8 requested by the applicant unless the city, county, or city and  
9 county makes a written finding, based upon substantial evidence,  
10 of ~~either~~ any of the following:

11 (A) The concession or incentive is not required in order to  
12 provide for affordable housing costs, as defined in Section 50052.5  
13 of the Health and Safety Code, or for rents for the targeted units  
14 to be set as specified in subdivision (c).

15 (B) The concession or incentive would have a specific adverse  
16 impact, as defined in paragraph (2) of subdivision (d) of Section  
17 65589.5, upon public health and safety or the physical environment  
18 or on any real property that is listed in the California Register of  
19 Historical Resources and for which there is no feasible method to  
20 satisfactorily mitigate or avoid the specific adverse impact without  
21 rendering the development unaffordable to low- and  
22 moderate-income households.

23 (C) *The concession or incentive would be contrary to state or*  
24 *federal law.*

25 (2) The applicant shall receive the following number of  
26 incentives or concessions:

27 (A) One incentive or concession for projects that include at least  
28 ~~10~~ 20 percent of the total units for lower income households, at  
29 ~~least 5~~ 15 percent for very low income households, or at least ~~10~~  
30 20 percent for persons and families of moderate income in a  
31 common interest development.

32 (B) Two incentives or concessions for projects that include at  
33 ~~least 20~~ 30 percent of the total units for lower income households,  
34 ~~at least 10~~ 20 percent for very low income households, or at least  
35 ~~20~~ 30 percent for persons and families of moderate income in a  
36 common interest development.

37 (C) Three incentives or concessions for projects that include at  
38 ~~least 30~~ 40 percent of the total units for lower income households,  
39 ~~at least 15~~ 25 percent for very low income households, or at least

1 30 40 percent for persons and families of moderate income in a  
 2 common interest development.

3 (3) The applicant may initiate judicial proceedings if the city,  
 4 county, or city and county refuses to grant a requested density  
 5 bonus, incentive, or concession. ~~If a court finds that the refusal to~~  
 6 ~~grant a requested density bonus, incentive, or concession is in~~  
 7 ~~violation of this section, the court shall award the plaintiff~~  
 8 ~~reasonable attorney’s fees and costs of suit.~~ Nothing in this  
 9 subdivision shall be interpreted to require a local government to  
 10 grant an incentive or concession that has a specific, adverse impact,  
 11 as defined in paragraph (2) of subdivision (d) of Section 65589.5,  
 12 upon health, safety, or the physical environment, and for which  
 13 there is no feasible method to satisfactorily mitigate or avoid the  
 14 specific adverse impact. Nothing in this subdivision shall be  
 15 interpreted to require a local government to grant an incentive or  
 16 concession that would have an adverse impact on any real property  
 17 that is listed in the California Register of Historical Resources.  
 18 The city, county, or city and county shall establish procedures for  
 19 carrying out this section, that shall include legislative body  
 20 approval of the means of compliance with this section. ~~The city,~~  
 21 ~~county, or city and county shall also establish procedures for~~  
 22 ~~waiving or modifying development and zoning standards that~~  
 23 ~~would otherwise inhibit the utilization of the density bonus on~~  
 24 ~~specific sites. These procedures shall include, but not be limited~~  
 25 ~~to, such items as minimum lot size, side yard setbacks, and~~  
 26 ~~placement of public works improvements.~~

27 (e) In no case may a city, county, or city and county apply any  
 28 development standard that will have the effect of *physically*  
 29 precluding the construction of a development meeting the criteria  
 30 of subdivision (b) at the densities or with the concessions or  
 31 incentives permitted by this section. An applicant may submit to  
 32 a city, county, or city and county a proposal for the waiver or  
 33 reduction of development standards *that will have the effect of*  
 34 *physically precluding the construction of a development meeting*  
 35 *the criteria of subdivision (b) at the densities or with the*  
 36 *concessions or incentives permitted under this section*, and may  
 37 request a meeting with the city, county, or city and county. ~~If a~~  
 38 ~~court finds that the refusal to grant a waiver or reduction of~~  
 39 ~~development standards is in violation of this section, the court~~  
 40 ~~shall award the plaintiff reasonable attorney’s fees and costs of~~

1 ~~suit~~. Nothing in this subdivision shall be interpreted to require a  
 2 local government to waive or reduce development standards if the  
 3 waiver or reduction would have a specific, adverse impact, as  
 4 defined in paragraph (2) of subdivision (d) of Section 65589.5,  
 5 upon health, safety, or the physical environment, and for which  
 6 there is no feasible method to satisfactorily mitigate or avoid the  
 7 specific adverse impact. Nothing in this subdivision shall be  
 8 interpreted to require a local government to waive or reduce  
 9 development standards that would have an adverse impact on any  
 10 real property that is listed in the California Register of Historical  
 11 Resources, *or to grant any waiver or reduction that would be*  
 12 *contrary to state or federal law. The waiver or reduction of*  
 13 *development standards shall not be interpreted, in and of itself,*  
 14 *to require a general plan amendment, local coastal plan*  
 15 *amendment, zoning change, or other discretionary approval.*  
 16 *However, if the housing development for which a waiver or*  
 17 *reduction of development standards is requested requires a*  
 18 *discretionary approval, any request for the waiver or reduction*  
 19 *shall be reviewed concurrently with the required discretionary*  
 20 *approval.*

21 ~~(f) The applicant shall show that the waiver or modification is~~  
 22 ~~necessary to make the housing units economically feasible.~~

23 ~~(g)~~

24 (f) For the purposes of this chapter, “density bonus” means a  
 25 density increase over the otherwise maximum allowable residential  
 26 density under the applicable zoning ordinance and land use element  
 27 of the general plan as of the date of application by the applicant  
 28 to the city, county, or city and county. The applicant may elect to  
 29 accept a lesser percentage of density bonus. The amount of density  
 30 bonus to which the applicant is entitled shall vary according to the  
 31 amount by which the percentage of affordable housing units  
 32 exceeds the percentage established in subdivision (b).

33 (1) For housing developments meeting the criteria of  
 34 subparagraph (A) of paragraph (1) of subdivision (b), the density  
 35 bonus shall be calculated as follows:

37	Percentage Low-Income Units	Percentage Density Bonus
38	10	20
39	11	21.5
40	12	23

	Percentage Low-Income Units	Percentage Density Bonus
1		
2	13	24.5
3	14	26
4	15	27.5
5	17	30.5
6	18	32
7	19	33.5
8	20	35
9		

10 (2) For housing developments meeting the criteria of  
 11 subparagraph (B) of paragraph (1) of subdivision (b), the density  
 12 bonus shall be calculated as follows:

	Percentage Very Low Income Units	Percentage Density Bonus
13		
14		
15	5	20
16	6	22.5
17	7	25
18	8	27.5
19	9	30
20	10	32.5
21	11	35
22		

23 (3) For housing developments meeting the criteria of  
 24 subparagraph (C) of paragraph (1) of subdivision (b), the density  
 25 bonus shall be 20 percent.

26 (4) For housing developments meeting the criteria of  
 27 subparagraph (D) of paragraph (1) of subdivision (b), the density  
 28 bonus shall be calculated as follows:

	Percentage Moderate-Income Units	Percentage Density Bonus
29		
30		
31	10	5
32	11	6
33	12	7
34	13	8
35	14	9
36	15	10
37	16	11
38	17	12
39	18	13
40	19	14

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	20	15
3	21	16
4	22	17
5	23	18
6	24	19
7	25	20
8	26	21
9	27	22
10	28	23
11	29	24
12	30	25
13	31	26
14	32	27
15	33	28
16	34	29
17	35	30
18	36	31
19	37	32
20	38	33
21	39	34
22	40	35

23  
24 (5) All density calculations resulting in fractional units shall be  
25 rounded up to the next whole number. The granting of a density  
26 bonus shall not be interpreted, in and of itself, to require a general  
27 plan amendment, local coastal plan amendment, zoning change,  
28 or other discretionary approval. ~~As used in subdivision (b), “total~~  
29 ~~units” or “total dwelling units” does not include units permitted~~  
30 ~~by a density bonus awarded pursuant to this section or any local~~  
31 ~~law granting a greater density bonus. The density bonus provided~~  
32 ~~by this section shall apply to housing developments consisting of~~  
33 ~~five or more dwelling units. However, if the housing development~~  
34 ~~for which a density bonus is requested requires a discretionary~~  
35 ~~approval, any request for the density bonus for that housing~~  
36 ~~development shall be reviewed concurrently with the required~~  
37 ~~discretionary approval.~~

38 (h)  
39 (g) (1) When an applicant for a tentative subdivision map,  
40 parcel map, or other residential development approval donates

1 land to a city, county, or city and county ~~as provided for in~~  
 2 *accordance with* this subdivision, the applicant shall be entitled  
 3 to a 15-percent increase above the otherwise maximum allowable  
 4 residential density under the applicable zoning ordinance and land  
 5 use element of the general plan for the entire development, as  
 6 follows:

	Percentage Very Low Income	Percentage Density Bonus
7		
8		
9	10	15
10	11	16
11	12	17
12	13	18
13	14	19
14	15	20
15	16	21
16	17	22
17	18	23
18	19	24
19	20	25
20	21	26
21	22	27
22	23	28
23	24	29
24	25	30
25	26	31
26	27	32
27	28	33
28	29	34
29	30	35
30		

31 (2) This increase shall be in addition to any increase in density  
 32 mandated by subdivision (b), up to a maximum combined mandated  
 33 density increase of 35 percent if an applicant seeks ~~both the an~~  
 34 increase ~~required~~ pursuant to *both* this subdivision and subdivision  
 35 (b). All density calculations resulting in fractional units shall be  
 36 rounded up to the next whole number. Nothing in this subdivision  
 37 shall be construed to enlarge or diminish the authority of a city,  
 38 county, or city and county to require a developer to donate land  
 39 as a condition of development. An applicant shall be eligible for

1 the increased density bonus described in this subdivision if all of  
2 the following conditions are met:

3 (A) The applicant donates and transfers the land no later than  
4 the date of approval of the final subdivision map, parcel map, or  
5 residential development application.

6 (B) The developable acreage and zoning classification of the  
7 land being transferred are sufficient to permit construction of units  
8 affordable to very low income households in an amount not less  
9 than 10 percent of the number of residential units of the proposed  
10 development.

11 (C) The transferred land is at least one acre in size ~~or~~ *and* of  
12 sufficient size to permit development of at least 40 units, has the  
13 appropriate general plan designation, is appropriately zoned for  
14 development ~~as affordable housing at the density described in this~~  
15 ~~subdivision, and is or will be served by adequate public facilities~~  
16 ~~and infrastructure. The land shall have appropriate zoning and~~  
17 ~~development standards to make the development of the affordable~~  
18 ~~units feasible. No later than the date of approval of the final~~  
19 ~~subdivision map, parcel map, or of the residential development,~~  
20 ~~the~~

21 (D) *The* transferred land shall have all of the permits and  
22 approvals, other than building permits, necessary for the  
23 development of the very low income housing units on the  
24 transferred land, *not later than the date of approval of the final*  
25 *subdivision map, parcel map, or residential development*  
26 *application*, except that the local government may subject the  
27 proposed development to subsequent design review to the extent  
28 authorized by subdivision (i) of Section 65583.2 if the design is  
29 not reviewed by the local government prior to the time of transfer.

30 ~~(D)~~

31 (E) The transferred land and the affordable units shall be subject  
32 to a deed restriction ensuring continued affordability of the units  
33 consistent with paragraphs (1) and (2) of subdivision (c), which  
34 shall be recorded on the property at the time of ~~dedication~~ *the*  
35 *transfer*.

36 ~~(E)~~

37 (F) The land is transferred to the local agency or to a housing  
38 developer approved by the local agency. The local agency may  
39 require the applicant to identify and transfer the land to the  
40 developer.

1     ~~(F)~~  
 2     (G) The transferred land shall be within the boundary of the  
 3 proposed development or, if the local agency agrees, within  
 4 one-quarter mile of the boundary of the proposed development.

5     ~~(i)~~  
 6     (H) *A source of funding for the very low income units shall be*  
 7 *identified and approved by the local agency not later than the date*  
 8 *of approval of the final subdivision map, parcel map, or residential*  
 9 *development application.*

10    (h) (1) When an applicant proposes to construct a housing  
 11 development that conforms to the requirements of subdivision (b)  
 12 and includes a child care facility that will be located on the  
 13 premises of, as part of, or adjacent to, the project, the city, county,  
 14 or city and county shall grant either of the following:

15     (A) An additional density bonus that is an amount of square  
 16 feet of residential space that is equal to or greater than the amount  
 17 of square feet in the child care facility.

18     (B) An additional concession or incentive that contributes  
 19 significantly to the economic feasibility of the construction of the  
 20 child care facility.

21    (2) The city, county, or city and county shall require, as a  
 22 condition of approving the housing development, that the following  
 23 occur:

24     (A) The child care facility shall remain in operation for a period  
 25 of time that is as long as or longer than the period of time during  
 26 which the density bonus units are required to remain affordable  
 27 pursuant to subdivision (c).

28     (B) Of the children who attend the child care facility, the  
 29 children of very low income households, lower income households,  
 30 or families of moderate income shall equal a percentage that is  
 31 equal to or greater than the percentage of dwelling units that are  
 32 required for very low income households, lower income  
 33 households, or families of moderate income pursuant to subdivision  
 34 (b).

35    (3) Notwithstanding any requirement of this subdivision, a city,  
 36 county, or a city and county shall not be required to provide a  
 37 density bonus or concession for a child care facility if it finds,  
 38 based upon substantial evidence, that the community has adequate  
 39 child care facilities.

1 (4) “Child care facility,” as used in this section, means a child  
2 day care facility other than a family day care home, including, but  
3 not limited to, infant centers, preschools, extended day care  
4 facilities, and schoolage child care centers.

5 (j)

6 (i) “Housing development,” as used in this section, means ~~one~~  
7 ~~or more groups of projects for residential units constructed in the~~  
8 ~~planned development of a city, county, or city and county a~~  
9 ~~development project for five or more residential units.~~ For the  
10 purposes of this section, “housing development” also includes a  
11 subdivision or common interest development, as defined in Section  
12 1351 of the Civil Code, approved by a city, county, or city and  
13 county and consists of residential units or unimproved residential  
14 lots and either a project to substantially rehabilitate and convert  
15 an existing commercial building to residential use or the substantial  
16 rehabilitation of an existing multifamily dwelling, as defined in  
17 subdivision (d) of Section 65863.4, where the result of the  
18 rehabilitation would be a net increase in available residential units.  
19 ~~For the purpose of calculating a density bonus, the residential units~~  
20 ~~do not have to be based upon individual subdivision maps or~~  
21 ~~parcels.~~ The density bonus shall be permitted in geographic areas  
22 of the housing development other than the areas where the units  
23 for the lower income households are located.

24 (k)

25 (j) The granting of a concession or incentive shall not be  
26 interpreted, in and of itself, to require a general plan amendment,  
27 local coastal plan amendment, zoning change, or other discretionary  
28 approval. This provision is declaratory of existing law.

29 (l)

30 (k) For the purposes of this chapter, concession or incentive  
31 means any of the following, *but does not include elimination or*  
32 *modification of the public review process:*

33 (1) A reduction in site development standards or a modification  
34 of zoning code requirements or architectural design requirements  
35 that exceed the minimum building standards approved by the  
36 California Building Standards Commission as provided in Part 2.5  
37 (commencing with Section 18901) of Division 13 of the Health  
38 and Safety Code, including, but not limited to, a reduction in  
39 setback and square footage requirements and in the ratio of  
40 vehicular parking spaces that would otherwise be required that

1 results in identifiable, financially sufficient, and actual cost  
 2 reductions.

3 (2) Approval of mixed use zoning in conjunction with the  
 4 housing project if commercial, office, industrial, or other land uses  
 5 will reduce the cost of the housing development and if the  
 6 commercial, office, industrial, or other land uses are compatible  
 7 with the housing project and the existing or planned development  
 8 in the area where the proposed housing project will be located.

9 (3) Other ~~regulatory~~ incentives or concessions proposed by the  
 10 developer or the city, county, or city and county that result in  
 11 identifiable, financially sufficient, and actual cost reductions.

12 ~~This subdivision~~

13 (l) *Subdivision (k)* does not limit or require the provision of  
 14 direct financial incentives for the housing development, including  
 15 the provision of publicly owned land, by the city, county, or city  
 16 and county, or the waiver of fees or dedication requirements.

17 (m) Nothing in this section shall be construed to supersede or  
 18 in any way alter or lessen the effect or application of the California  
 19 Coastal Act (Division 20 (commencing with Section 30000) of  
 20 the Public Resources Code.

21 (n) ~~Nothing~~ *If permitted by local ordinance, nothing* in this  
 22 section shall be construed to prohibit a city, county, or city and  
 23 county from granting a density bonus greater than what is described  
 24 in this section for a development that meets the requirements of  
 25 this section or from granting a proportionately lower density bonus  
 26 than what is required by this section for developments that do not  
 27 meet the requirements of this section.

28 (o) For purposes of this section, the following definitions shall  
 29 apply:

30 (1) “Development standard” includes site or construction  
 31 conditions, *such as height limitations, setback requirements, floor*  
 32 *area ratios, onsite open space requirements, and parking ratios,*  
 33 that apply to a residential development pursuant to any ordinance,  
 34 general plan element, specific plan, ~~charter amendment~~, or other  
 35 local condition, law, policy, resolution, or regulation, *the*  
 36 *application of which would physically preclude the construction*  
 37 *of the housing development at the density allowed pursuant to this*  
 38 *section.*

39 (2) “Maximum allowable residential density” means the density  
 40 allowed under the zoning ordinance *and land use element of the*

1 *general plan*, or if a range of density is permitted, means the  
2 maximum allowable density for the specific zoning range *and land*  
3 *use element of the general plan* applicable to the project.

4 (p) (1) Upon the request of the developer, no city, county, or  
5 city and county shall require a vehicular parking ratio, inclusive  
6 of handicapped and guest parking, of a development meeting the  
7 criteria of subdivision (b), that exceeds the following ratios:

8 (A) Zero to one bedrooms: one onsite parking space.

9 (B) Two to three bedrooms: two onsite parking spaces.

10 (C) Four and more bedrooms: two and one-half parking spaces.

11 (2) If the total number of parking spaces required for a  
12 development is other than a whole number, the number shall be  
13 rounded up to the next whole number. For purposes of this  
14 subdivision, a development may provide “onsite parking” through  
15 tandem parking or uncovered parking, but not through onstreet  
16 parking.

17 (3) This subdivision shall apply to a development that meets  
18 the requirements of subdivision (b) but only at the request of the  
19 applicant. An applicant may request ~~additional parking incentives~~  
20 ~~or concessions beyond those provided in this section, subject to~~  
21 ~~subdivision (d)~~ *a waiver of parking pursuant to subdivision (d),*  
22 *in addition to the request made pursuant to this subdivision.*