


**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: May 20, 2022

TO: Department of City Planning Staff;  
Department of Building and Safety Staff;  
Interested Parties

FROM: Vincent P. Bertoni, AICP, Director of Planning 

SUBJECT: **IMPLEMENTATION OF STATE DENSITY BONUS LAWS - SB 290, SB 728, AB 634 (2021)**

On September 28, 2021, the Governor signed Senate Bills (SB) 290 and 728 and Assembly Bill (AB) 634, three bills that make various amendments and clarifications to State Density Bonus Law, Government Code (GC) Sections 65400 and 65915. State Density Bonus Law is implemented through the City's Density Bonus Ordinance, Los Angeles Municipal Code (LAMC) Section 12.22 A.25.

This memo describes the changes, clarifications and additions to State Density Bonus Law, and will serve as interim guidance for staff and project applicants on the implementation of SB 290, SB 728, and AB 634 until the time the City's Density Bonus Ordinance is updated to include these provisions, or this memo is otherwise superseded. Staff and interested parties are encouraged to refer to state law in GC Section 65915 for additional information, as the memo is not exhaustive.

**Senate Bill 290 - Student Housing and Moderate Income Incentives**

SB 290 (Skinner) amends Section 65915 of the Government Code, relating to State Density Bonus Law in regards to incentives and concessions available for student housing and Moderate-Income housing units.

*Student Housing*

SB 290 allows qualifying student housing developments to be eligible for one incentive or concession under State Density Bonus Law when the development contains at least 20% of the units for "Lower Income Students".

As defined by the bill, a Lower Income Student is a student who has a household income and asset level that qualifies them to be a Cal Grant A or Cal Grant B award recipient. The eligibility of a student to occupy a unit for Lower Income students will be verified by an affidavit, award letter, or letter of eligibility provided by the college or university at which the student is enrolled, or by the California Student Aid Commission.

*Moderate-Income Housing*

SB 290 also expands the parking incentives available for Moderate-Income housing units utilizing the State Density Bonus incentives. Housing developments that include at least 40% Moderate-Income units and are located within one-half mile of a major transit stop are eligible for a parking ratio of 0.5 spaces per bedroom, inclusive of parking for persons with a disability and guests.

### *Additional Clarifications and Modifications*

In addition, SB 290 provides various clarifications and modifications to State Density Bonus Law. The bill provides clarity on how to determine the required percentage of affordable units needed to qualify for State Density Bonus incentives. The bill clarifies that the definition of "Total Units" or "Total Dwelling Units" excludes the units added by a density bonus incentive or any local affordable housing incentive, and includes any units designated to satisfy a local inclusionary zoning requirement. In Los Angeles, local inclusionary requirements are currently in place in the Central City West Specific Plan Area and the Coastal Zone (Mello Act).

Lastly, the bill further clarifies that a finding of a specific adverse impact on the physical environment is no longer an appropriate basis for denial of a concession, incentive, or waiver requested through the Density Bonus Ordinance. Concession and incentive requests will still be reviewed if an adverse impact is upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to Low-Income and Moderate-Income households.

Lastly, SB 290 further amends Section 65400 to require reporting on student housing developments in Annual Progress Reports (APR).

### **Senate Bill 728 - Purchase of For-Sale Unit by Qualified Nonprofit Housing Corporation**

SB 728 (Hertzberg) amends Section 65915 of the Government Code to authorize a Qualified Nonprofit Housing Corporation that meets specified criteria to purchase a restricted income restricted income for-sale unit under State Density Bonus Law. Current Density Bonus Law provides incentives to for-sale housing developments that provide a specified percentage of units made available for sale at an affordable cost to an income-qualified household. The bill expands current law to allow for a Qualified Nonprofit Housing Corporation to purchase the units instead of an individual household.

Under state law, a Qualified Nonprofit Housing Corporation must purchase the unit pursuant to a specified recorded contract that includes all of the following provisions:

- an affordability restriction on the sale and conveyance of the property that ensures that the property will be preserved for Lower-Income housing for at least 45 years and will be sold or resold to only persons of Very Low-, Low-, or Moderate-Income;
- an equity sharing agreement, as specified in Government Code Section 65915 (c)(1)(C) and further described below; and
- a repurchase option that requires a subsequent purchaser that desires to sell or convey the property to first offer the nonprofit corporation the opportunity to repurchase the property.

Pursuant to SB 728, a "Qualified Nonprofit Housing Corporation" is defined as a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to Low-Income families who participate in a special no-interest loan program.

Upon resale, the unit will be subject to an equity sharing agreement, which provides that a share of the equity appreciation shall be provided either to the Qualified Nonprofit Housing Corporation, or to the City to be used to promote homeownership programs for Lower-Income households, based on the terms of the agreement. To begin the process to utilize the provisions of SB 728, please contact the Los Angeles Housing Department (LAHD).

## **Assembly Bill 634 - Covenant Terms Exceeding 55 Years**

AB 634 (Carillo) adds Section 65915.2 to the Government Code, to provide clarity regarding the length of affordability terms adopted through local ordinance. Under State Density Bonus Law, any affordable units required to be provided to qualify for a Density Bonus project are subject to a 55-year affordability term. This bill provides clarity that state law does not preclude a local jurisdiction from adopting a local ordinance which lengthens affordability periods beyond 55 years. Under any such local ordinance, extended affordability terms may not be applied to affordable units that would be financed with low-income housing tax credits.

The City has not yet adopted any local ordinances which require affordability terms in excess of 55 years; therefore, this bill does not have any immediate effect on housing development projects. Future local ordinances may elect to utilize provisions of this law and extend affordability terms.

## **Implementation and Effective Date**

On January 1, 2022, the amendments to State Density Bonus Law described above became effective and available to any Density Bonus project, provided the project meets the criteria in state law as specified above. These amendments do not affect development projects utilizing the Transit Oriented Communities (TOC) Program.

To make a request for utilization of additional bonuses or allowances provided by these changes to state law after a discretionary entitlement case application has been submitted, but prior to a letter of determination being issued, please contact the planner assigned to the case (available in the online Planning Case Tracking System (PCTS)). The Affordable Housing Referral Form and any other relevant materials should be amended to include the new request.

If a project already has an approved entitlement, revised plans will need to be provided to the Senior Planner of the Project Planning team that processed the entitlement case. A Transit Verification Form may need to be obtained from City Planning, and the project case file will need to be updated with a staff letter to the file to reflect the additional ministerial incentives, as well as any revised plans to reflect physical changes to the project made as a result.

For any questions related to this memo, please contact the Citywide housing policy team at [planning.housingpolicy@lacity.org](mailto:planning.housingpolicy@lacity.org). For questions about the building permit process please contact LADBS through the City's 311 call center by dialing 311 or by visiting <https://www.ladbs.org/our-organization/customer-services/contact-us>.