

**ASSEMBLY BILL**

**No. 744**

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**Introduced by Assembly Member Chau**

February 25, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 744, as introduced, Chau. Planning and zoning: density bonuses.

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 very low, low-, or moderate-income households or qualifying residents. Existing law requires continued affordability for 55 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus.

This bill would make technical, nonsubstantive changes to these provisions.

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:

1 65915. (a) When an applicant seeks a density bonus for a  
2 housing development within, or for the donation of land for housing  
3 within, the jurisdiction of a city, county, or city and county, that  
4 local government shall provide the applicant with incentives or  
5 concessions for the production of housing units and child care  
6 facilities as prescribed in this section. All cities, counties, or cities  
7 and counties shall adopt an ordinance that specifies how  
8 compliance with this section will be implemented. Failure to adopt  
9 an ordinance shall not relieve a city, county, or city and county  
10 from complying with this section.

11 (b) (1) A city, county, or city and county shall grant one density  
12 bonus, the amount of which shall be as specified in subdivision  
13 (f), and incentives or concessions, as described in subdivision (d),  
14 when an applicant for a housing development seeks and agrees to  
15 construct a housing development, excluding any units permitted  
16 by the density bonus awarded pursuant to this section, that will  
17 contain at least any one of the following:

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

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

24 (C) A senior citizen housing development, as defined in Sections  
25 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits  
26 residency based on age requirements for housing for older persons  
27 pursuant to Section 798.76 or 799.5 of the Civil Code.

28 (D) Ten percent of the total dwelling units in a common interest  
29 ~~development~~ *development*, as defined in Section 4100 of the Civil  
30 ~~Code Code~~, for persons and families of moderate income, as  
31 defined in Section 50093 of the Health and Safety Code, provided  
32 that all units in the development are offered to the public for  
33 purchase.

34 (2) For purposes of calculating the amount of the density bonus  
35 pursuant to subdivision (f), ~~the~~ *an* applicant who requests a density  
36 bonus pursuant to this subdivision shall elect whether the bonus  
37 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)  
38 of paragraph (1).

39 (3) For the purposes of this section, “total units” or “total  
40 dwelling units” does not include units added by a density bonus

1 awarded pursuant to this section or any local law granting a greater  
2 density bonus.

3 (c) (1) An applicant shall agree to, and the city, county, or city  
4 and county shall ensure, *the* continued affordability of all very low  
5 and low-income rental units that qualified the applicant for the  
6 award of the density bonus for 55 years or a longer period of time  
7 if required by the construction or mortgage financing assistance  
8 program, mortgage insurance program, or rental subsidy program.  
9 Rents for the lower income density bonus units shall be set at an  
10 affordable rent as defined in Section 50053 of the Health and Safety  
11 Code.

12 (2) An applicant shall agree to, and the city, county, or city and  
13 county shall ensure that, the initial occupant of all for-sale units  
14 that qualified the applicant for the award of the density bonus are  
15 persons and families of very low, low, or moderate income, as  
16 required, and that the units are offered at an affordable housing  
17 cost, as that cost is defined in Section 50052.5 of the Health and  
18 Safety Code. The local government shall enforce an equity sharing  
19 agreement, unless it is in conflict with the requirements of another  
20 public funding source or law. The following apply to the equity  
21 sharing agreement:

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

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

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

1 (3) (A) An applicant shall be ineligible for a density bonus or  
2 any other incentives or concessions under this section if the housing  
3 development is proposed on any property that includes a parcel or  
4 parcels on which rental dwelling units are or, if the dwelling units  
5 have been vacated or demolished in the five-year period preceding  
6 the application, have been subject to a recorded covenant,  
7 ordinance, or law that restricts rents to levels affordable to persons  
8 and families of lower or very low income; subject to any other  
9 form of rent or price control through a public entity’s valid exercise  
10 of its police power; or occupied by lower or very low income  
11 households, unless the proposed housing development replaces  
12 those units, and either of the following applies:

13 (i) The proposed housing development, inclusive of the units  
14 replaced pursuant to this paragraph, contains affordable units at  
15 the percentages set forth in subdivision (b).

16 (ii) Each unit in the development, exclusive of a manager’s unit  
17 or units, is affordable to, and occupied by, either a lower or very  
18 low income household.

19 (B) For the purposes of this paragraph, “replace” shall mean  
20 either of the following:

21 (i) If any dwelling units described in subparagraph (A) are  
22 occupied on the date of application, the proposed housing  
23 development shall provide at least the same number of units of  
24 equivalent size or type, or both, to be made available at affordable  
25 rent or affordable housing cost to, and occupied by, persons and  
26 families in the same or lower income category as those households  
27 in occupancy. For unoccupied dwelling units described in  
28 subparagraph (A) in a development with occupied units, the  
29 proposed housing development shall provide units of equivalent  
30 size or type, or both, to be made available at affordable rent or  
31 affordable housing cost to, and occupied by, persons and families  
32 in the same or lower income category in the same proportion of  
33 affordability as the occupied units. All replacement calculations  
34 resulting in fractional units shall be rounded up to the next whole  
35 number. If the replacement units will be rental dwelling units,  
36 these units shall be subject to a recorded affordability restriction  
37 for at least 55 years. If the proposed development is for-sale units,  
38 the units replaced shall be subject to paragraph (2).

39 (ii) If all dwelling units described in subparagraph (A) have  
40 been vacated or demolished within the five-year period preceding

1 the application, the proposed housing development shall provide  
2 at least the same number of units of equivalent size or type, or  
3 both, as existed at the highpoint of those units in the five-year  
4 period preceding the application to be made available at affordable  
5 rent or affordable housing cost to, and occupied by, persons and  
6 families in the same or lower income category as those persons  
7 and families in occupancy at that time, if known. If the incomes  
8 of the persons and families in occupancy at the highpoint is not  
9 known, then one-half of the required units shall be made available  
10 at affordable rent or affordable housing cost to, and occupied by,  
11 very low income persons and families and one-half of the required  
12 units shall be made available for rent at affordable housing costs  
13 to, and occupied by, low-income persons and families. All  
14 replacement calculations resulting in fractional units shall be  
15 rounded up to the next whole number. If the replacement units will  
16 be rental dwelling units, these units shall be subject to a recorded  
17 affordability restriction for at least 55 years. If the proposed  
18 development is for-sale units, the units replaced shall be subject  
19 to paragraph (2).

20 (C) Paragraph (3) of subdivision (c) does not apply to an  
21 applicant seeking a density bonus for a proposed housing  
22 development if ~~their~~ *his or her* application was submitted to, or  
23 processed by, a city, county, or city and county before January 1,  
24 2015.

25 (d) (1) An applicant for a density bonus pursuant to subdivision  
26 (b) may submit to a city, county, or city and county a proposal for  
27 the specific incentives or concessions that the applicant requests  
28 pursuant to this section, and may request a meeting with the city,  
29 county, or city and county. The city, county, or city and county  
30 shall grant the concession or incentive requested by the applicant  
31 unless the city, county, or city and county makes a written finding,  
32 based upon substantial evidence, of any of the following:

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

37 (B) The concession or incentive would have a specific adverse  
38 impact, as defined in paragraph (2) of subdivision (d) of Section  
39 65589.5, upon public health and safety or the physical environment  
40 or on any real property that is listed in the California Register of

1 Historical Resources and for which there is no feasible method to  
2 satisfactorily mitigate or avoid the specific adverse impact without  
3 rendering the development unaffordable to low- and  
4 moderate-income households.

5 (C) The concession or incentive would be contrary to state or  
6 federal law.

7 (2) The applicant shall receive the following number of  
8 incentives or concessions:

9 (A) One incentive or concession for projects that include at least  
10 10 percent of the total units for lower income households, at least  
11 5 percent for very low income households, or at least 10 percent  
12 for persons and families of moderate income in a common interest  
13 development.

14 (B) Two incentives or concessions for projects that include at  
15 least 20 percent of the total units for lower income households, at  
16 least 10 percent for very low income households, or at least 20  
17 percent for persons and families of moderate income in a common  
18 interest development.

19 (C) Three incentives or concessions for projects that include at  
20 least 30 percent of the total units for lower income households, at  
21 least 15 percent for very low income households, or at least 30  
22 percent for persons and families of moderate income in a common  
23 interest development.

24 (3) The applicant may initiate judicial proceedings if the city,  
25 county, or city and county refuses to grant a requested density  
26 bonus, incentive, or concession. If a court finds that the refusal to  
27 grant a requested density bonus, incentive, or concession is in  
28 violation of this section, the court shall award the plaintiff  
29 reasonable attorney's fees and costs of suit. Nothing in this  
30 subdivision shall be interpreted to require a local government to  
31 grant an incentive or concession that has a specific, adverse impact,  
32 as defined in paragraph (2) of subdivision (d) of Section 65589.5,  
33 upon health, safety, or the physical environment, and for which  
34 there is no feasible method to satisfactorily mitigate or avoid the  
35 specific adverse impact. Nothing in this subdivision shall be  
36 interpreted to require a local government to grant an incentive or  
37 concession that would have an adverse impact on any real property  
38 that is listed in the California Register of Historical Resources.  
39 The city, county, or city and county shall establish procedures for

1 carrying out this section, that shall include legislative body  
2 approval of the means of compliance with this section.

3 (e) (1) In no case may a city, county, or city and county apply  
4 any development standard that will have the effect of physically  
5 precluding the construction of a development meeting the criteria  
6 of subdivision (b) at the densities or with the concessions or  
7 incentives permitted by this section. An applicant may submit to  
8 a city, county, or city and county a proposal for the waiver or  
9 reduction of development standards that will have the effect of  
10 physically precluding the construction of a development meeting  
11 the criteria of subdivision (b) at the densities or with the  
12 concessions or incentives permitted under this section, and may  
13 request a meeting with the city, county, or city and county. If a  
14 court finds that the refusal to grant a waiver or reduction of  
15 development standards is in violation of this section, the court  
16 shall award the plaintiff reasonable attorney’s fees and costs of  
17 suit. Nothing in this subdivision shall be interpreted to require a  
18 local government to waive or reduce development standards if the  
19 waiver or reduction would have a specific, adverse impact, as  
20 defined in paragraph (2) of subdivision (d) of Section 65589.5,  
21 upon health, safety, or the physical environment, and for which  
22 there is no feasible method to satisfactorily mitigate or avoid the  
23 specific adverse impact. Nothing in this subdivision shall be  
24 interpreted to require a local government to waive or reduce  
25 development standards that would have an adverse impact on any  
26 real property that is listed in the California Register of Historical  
27 Resources, or to grant any waiver or reduction that would be  
28 contrary to state or federal law.

29 (2) A proposal for the waiver or reduction of development  
30 standards pursuant to this subdivision shall neither reduce nor  
31 increase the number of incentives or concessions to which the  
32 applicant is entitled pursuant to subdivision (d).

33 (f) For the purposes of this chapter, “density bonus” means a  
34 density increase over the otherwise maximum allowable residential  
35 density as of the date of application by the applicant to the city,  
36 county, or city and county. The applicant may elect to accept a  
37 lesser percentage of density bonus. The amount of density bonus  
38 to which the applicant is entitled shall vary according to the amount  
39 by which the percentage of affordable housing units exceeds the  
40 percentage established in subdivision (b).

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

	Percentage Low-Income Units	Percentage Density Bonus
4		
5		
6		
7	10	20
8	11	21.5
9	12	23
10	13	24.5
11	14	26
12	15	27.5
13	17	30.5
14	18	32
15	19	33.5
16	20	35

17  
18 (2) For housing developments meeting the criteria of  
19 subparagraph (B) of paragraph (1) of subdivision (b), the density  
20 bonus shall be calculated as follows:

	Percentage Very Low Income Units	Percentage Density Bonus
21		
22		
23	5	20
24	6	22.5
25	7	25
26	8	27.5
27	9	30
28	10	32.5
29	11	35

30  
31 (3) For housing developments meeting the criteria of  
32 subparagraph (C) of paragraph (1) of subdivision (b), the density  
33 bonus shall be 20 percent of the number of senior housing units.

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

	Percentage Moderate-Income Units	Percentage Density Bonus
37		
38		
39	10	5
40	11	6



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

31 (5) All density calculations resulting in fractional units shall be  
32 rounded up to the next whole number. The granting of a density  
33 bonus shall not be interpreted, in and of itself, to require a general  
34 plan amendment, local coastal plan amendment, zoning change,  
35 or other discretionary approval.

36 (g) (1) When an applicant for a tentative subdivision map,  
37 parcel map, or other residential development approval donates  
38 land to a city, county, or city and county in accordance with this  
39 subdivision, the applicant shall be entitled to a 15-percent increase

1 above the otherwise maximum allowable residential density for  
2 the entire development, as follows:

3	4 Percentage Very Low Income	Percentage Density Bonus
5	10	15
6	11	16
7	12	17
8	13	18
9	14	19
10	15	20
11	16	21
12	17	22
13	18	23
14	19	24
15	20	25
16	21	26
17	22	27
18	23	28
19	24	29
20	25	30
21	26	31
22	27	32
23	28	33
24	29	34
25	30	35

26  
27 (2) This increase shall be in addition to any increase in density  
28 mandated by subdivision (b), up to a maximum combined mandated  
29 density increase of 35 percent if an applicant seeks an increase  
30 pursuant to both this subdivision and subdivision (b). All density  
31 calculations resulting in fractional units shall be rounded up to the  
32 next whole number. Nothing in this subdivision shall be construed  
33 to enlarge or diminish the authority of a city, county, or city and  
34 county to require a developer to donate land as a condition of  
35 development. An applicant shall be eligible for the increased  
36 density bonus described in this subdivision if all of the following  
37 conditions are met:

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

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

6 (C) The transferred land is at least one acre in size or of  
7 sufficient size to permit development of at least 40 units, has the  
8 appropriate general plan designation, is appropriately zoned with  
9 appropriate development standards for development at the density  
10 described in paragraph (3) of subdivision (c) of Section 65583.2,  
11 and is or will be served by adequate public facilities and  
12 infrastructure.

13 (D) The transferred land shall have all of the permits and  
14 approvals, other than building permits, necessary for the  
15 development of the very low income housing units on the  
16 transferred land, not later than the date of approval of the final  
17 subdivision map, parcel map, or residential development  
18 application, except that the local government may subject the  
19 proposed development to subsequent design review to the extent  
20 authorized by subdivision (i) of Section 65583.2 if the design is  
21 not reviewed by the local government prior to the time of transfer.

22 (E) The transferred land and the affordable units shall be subject  
23 to a deed restriction ensuring continued affordability of the units  
24 consistent with paragraphs (1) and (2) of subdivision (c), which  
25 shall be recorded on the property at the time of the transfer.

26 (F) The land is transferred to the local agency or to a housing  
27 developer approved by the local agency. The local agency may  
28 require the applicant to identify and transfer the land to the  
29 developer.

30 (G) The transferred land shall be within the boundary of the  
31 proposed development or, if the local agency agrees, within  
32 one-quarter mile of the boundary of the proposed development.

33 (H) A proposed source of funding for the very low income units  
34 shall be identified not later than the date of approval of the final  
35 subdivision map, parcel map, or residential development  
36 application.

37 (h) (1) When an applicant proposes to construct a housing  
38 development that conforms to the requirements of subdivision (b)  
39 and includes a child care facility that will be located on the

1 premises of, as part of, or adjacent to, the project, the city, county,  
2 or city and county shall grant either of the following:

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

6 (B) An additional concession or incentive that contributes  
7 significantly to the economic feasibility of the construction of the  
8 child care facility.

9 (2) The city, county, or city and county shall require, as a  
10 condition of approving the housing development, that the following  
11 occur:

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

16 (B) Of the children who attend the child care facility, the  
17 children of very low income households, lower income households,  
18 or families of moderate income shall equal a percentage that is  
19 equal to or greater than the percentage of dwelling units that are  
20 required for very low income households, lower income  
21 households, or families of moderate income pursuant to subdivision  
22 (b).

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

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

32 (i) “Housing development,” as used in this section, means a  
33 development project for five or more residential units. For the  
34 purposes of this section, “housing development” also includes a  
35 subdivision or common interest development, as defined in Section  
36 4100 of the Civil Code, approved by a city, county, or city and  
37 county and consists of residential units or unimproved residential  
38 lots and either a project to substantially rehabilitate and convert  
39 an existing commercial building to residential use or the substantial  
40 rehabilitation of an existing multifamily dwelling, as defined in

1 subdivision (d) of Section 65863.4, where the result of the  
2 rehabilitation would be a net increase in available residential units.  
3 For the purpose of calculating a density bonus, the residential units  
4 shall be on contiguous sites that are the subject of one development  
5 application, but do not have to be based upon individual  
6 subdivision maps or parcels. The density bonus shall be permitted  
7 in geographic areas of the housing development other than the  
8 areas where the units for the lower income households are located.

9 (j) (1) The granting of a concession or incentive shall not be  
10 interpreted, in and of itself, to require a general plan amendment,  
11 local coastal plan amendment, zoning change, or other discretionary  
12 approval. This provision is declaratory of existing law.

13 (2) Except as provided in subdivisions (d) and (e), the granting  
14 of a density bonus shall not be interpreted to require the waiver of  
15 a local ordinance or provisions of a local ordinance unrelated to  
16 development standards.

17 (k) For the purposes of this chapter, concession or incentive  
18 means any of the following:

19 (1) A reduction in site development standards or a modification  
20 of zoning code requirements or architectural design requirements  
21 that exceed the minimum building standards approved by the  
22 California Building Standards Commission as provided in Part 2.5  
23 (commencing with Section 18901) of Division 13 of the Health  
24 and Safety Code, including, but not limited to, a reduction in  
25 setback and square footage requirements and in the ratio of  
26 vehicular parking spaces that would otherwise be required that  
27 results in identifiable, financially sufficient, and actual cost  
28 reductions.

29 (2) Approval of mixed-use zoning in conjunction with the  
30 housing project if commercial, office, industrial, or other land uses  
31 will reduce the cost of the housing development and if the  
32 commercial, office, industrial, or other land uses are compatible  
33 with the housing project and the existing or planned development  
34 in the area where the proposed housing project will be located.

35 (3) Other regulatory incentives or concessions proposed by the  
36 developer or the city, county, or city and county that result in  
37 identifiable, financially sufficient, and actual cost reductions.

38 (l) Subdivision (k) does not limit or require the provision of  
39 direct financial incentives for the housing development, including

1 the provision of publicly owned land, by the city, county, or city  
2 and county, or the waiver of fees or dedication requirements.

3 (m) This section shall not be construed to supersede or in any  
4 way alter or lessen the effect or application of the California  
5 Coastal Act of 1976 (Division 20 (commencing with Section  
6 30000) of the Public Resources Code).

7 (n) If permitted by local ordinance, nothing in this section shall  
8 be construed to prohibit a city, county, or city and county from  
9 granting a density bonus greater than what is described in this  
10 section for a development that meets the requirements of this  
11 section or from granting a proportionately lower density bonus  
12 than what is required by this section for developments that do not  
13 meet the requirements of this section.

14 (o) For purposes of this section, the following definitions shall  
15 apply:

16 (1) "Development standard" includes a site or construction  
17 condition, including, but not limited to, a height limitation, a  
18 setback requirement, a floor area ratio, an onsite open-space  
19 requirement, or a parking ratio that applies to a residential  
20 development pursuant to any ordinance, general plan element,  
21 specific plan, charter, or other local condition, law, policy,  
22 resolution, or regulation.

23 (2) "Maximum allowable residential density" means the density  
24 allowed under the zoning ordinance and land use element of the  
25 general plan, or if a range of density is permitted, means the  
26 maximum allowable density for the specific zoning range and land  
27 use element of the general plan applicable to the project. Where  
28 the density allowed under the zoning ordinance is inconsistent  
29 with the density allowed under the land use element of the general  
30 plan, the general plan density shall prevail.

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

- 35 (A) Zero to one bedroom: one onsite parking space.
- 36 (B) Two to three bedrooms: two onsite parking spaces.
- 37 (C) Four and more bedrooms: two and one-half parking spaces.

38 (2) If the total number of parking spaces required for a  
39 development is other than a whole number, the number shall be  
40 rounded up to the next whole number. For purposes of this

1 subdivision, a development may provide “onsite parking” through  
2 tandem parking or uncovered parking, but not through onstreet  
3 parking.

4 (3) This subdivision shall apply to a development that meets  
5 the requirements of subdivision (b) but only at the request of the  
6 applicant. An applicant may request parking incentives or  
7 concessions beyond those provided in this subdivision pursuant  
8 to subdivision (d).

O