



AMERICAN
BANKRUPTCY
INSTITUTE

Distressed Real Estate Symposium

Government's Role in Revitalizing Distressed Real Estate

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Government's Role in Revitalizing Distressed Real Estate



Land use opportunities and restrictions

- Cindy Starrett, Latham & Watkins
- Government timing challenges – moves much more slowly than the market
- Pandemic and post-pandemic changes :
 - Tenant protections against evictions despite non-payments of rent
 - Retail vacancies and rise of warehousing
 - Downtown ghost towns and increased acceptance of “adaptive reuse” for vacant offices
 - Need to increase housing supply and openness to new solutions, including focus on affordable housing and resources to address homelessness
 - Challenges to single-family zoning restrictions

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How can government be helpful?

- Local government’s zoning restricts allowed uses, densities, heights
- For redevelopment or reuse, zoning restrictions may need changes and/or zoning incentives can be helpful
- Other rules include building codes, fire codes, disabled access, signage rules, historic preservation: complex process for permitting
- For “public goods” like affordable housing and homeless shelters, government may also provide financial assistance and/or use of publicly owned property

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Discretionary approvals and CEQA

- Discretionary approvals involve agency judgment (such as a zoning change), but
- Ministerial approvals apply a checklist or clear requirements (such as a building permit for tenant improvements), and can be faster and easier
- Technical compliance with codes can be costly; to encourage favored uses such as adaptive reuse of older office buildings for residential or hotel uses, code relief is possible
- Discretionary approvals require a publicly noticed process and review under the California Environmental Quality Act (CEQA), sometimes with delays
- Discretionary approvals involve appeals and opponents can file legal challenges

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Cleanup and reuse of brownfields

- Large former industrial or defense industry sites offer big opportunities and big challenges
- As an example, Burbank Airport evolved from former Lockheed facility, and city's redevelopment agency used state laws protecting future purchasers from cleanup cost liabilities
- Another example is the former Rocketdyne facility in Warner Center/Canoga Park, where a retail proposal did not materialize and community voiced concerns about cleanup for decades
- California's Land Use Reuse and Revitalization Act encourages voluntary agreements for bona fide purchasers, to work with the CA Department of Toxic Substances Control (DTSC)
- Federal Environmental Protection Agency (EPA) also encourages reuse following cleanups.

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Affordable housing and incentive zoning

- Governments use incentive zoning to encourage desirable uses such as affordable housing
- One example: California's state-mandated density bonus program, where more market-rate units are allowed if developer provides certain numbers of affordable housing units
- In addition to increased density, developers can obtain height, setback, parking relief
- LA City's voter-adopted "Transit Oriented Communities" or TOC rules offer greater incentives are provided to encourage housing near transit areas

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What projects are cities likely to help with?

- Office / Commercial Properties
- Shopping Centers
- Unique Sites (manufacturing sites, airports, former military bases, etc.)

Changes in shopping and remote work patterns, will require many of these properties to be “reimagined”: change in use(s), revitalization, and size/scale.

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How can they help?

- Zoning & Entitlement of Land
- Tax-Exempt Bonds
- State & Federal Grant Monies
- Public-Private Partnerships (P3s)
- Tax-sharing Agreements

How do I get them to answer the phone or return my call?

They don't.

But...

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What's in it for them?

Revenue Enhancement

- Property Tax
- Sales tax
- Hotel Tax

Revenue Diversification

Economic Development

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What are the financing options?

Land-Secured Debt

- Community Facilities Districts (“CFDs or Mello Roos”) or Assessment Districts (“ADs”)

CFDs/ADs property-owner self-imposed tax that provides funding to up-front infrastructure

Tax Increment Financing

- Enhanced Infrastructure Financing Districts (“EIFDs”) or Climate Resiliency District (“CRDs”)

TIFs City (and/or County) pledges a share/portion of increased property tax that provides additional project funding or reimbursement of costs

Tax-exempt bonds can only pay for public infrastructure

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Pay attention to what is the current policy directives...

Affordable Housing

- Regional Housing Needs Allocation (RHNA)
- Homelessness
- Workforce Housing

Climate Resiliency

Transit-Oriented Development

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Case studies

- 1: Agency Help for Unhoused**
- 2: City as Receiver**
- 3: Adaptive Reuse**
- 4: Converting Retail Malls**

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Case study 1: Agency Help for Unhoused

- Downtown Women's Center: expanding housing to City-owned parking lot with public funds to pay for most of the capital costs:
 - State affordable housing funds
 - State "Affordable Housing and Sustainable Communities" program funded by "cap and trade" auction proceeds
 - Federal tax credits
- Operating costs primarily paid by "project-based vouchers", yielding specified rents per unit to developer
 - Project-based vouchers, essential for new 100% affordable projects, are scarce
 - More readily available are Section 8 "tenant-based vouchers", where the tenant must locate her own vacant housing unit, nearly impossible in tight market

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Case study 2: City as Receiver

- 4/23: Court approved City petition appoint receiver for 29 properties managed by Skid Row Housing Trust (SRHT), occupied by 1,500 vulnerable tenants with subsidized rents. See CA Health and Safety Code 17980.7 (c), requiring proof of notice to all persons with a recorded interest
- SRHT suffered large financial shortfalls between rent revenues and costs, resulting in unhealthy and dangerous conditions creating risks to tenants. Receiver's mission: abate threats to life, health and safety, including preparation of a remediation plan.
- 6/23: receiver replaced, and City has approved over \$40 million for properties thru 6/24, with more needed. Single Room Occupancy ("SRO") units have high vacancies, costly maintenance challenges and insufficient funding for on-site support and treatment programs.
- 4/24: buyer dropped out of proposed purchase for 6 buildings, citing high maintenance costs; though receiver has sold those in better condition, some require redevelopment to become viable. The City's priorities include relocations as needed for tenants.

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Case study 3: Adaptive Reuse

- Special rules for reuse of existing buildings encourage changes of use, such as for older office buildings to be converted to residential or hotel uses; more limited retail conversions expected
- Around 2000, LA's program created for buildings over 25 years old spurred economic growth for Downtown LA with thousands of housing units; CEQA exemptions applied and new categories were established within building and fire codes
- New post-pandemic proposals would expand adaptive reuse Citywide to include buildings as young as 5 years old, encouraging residential transformations for existing buildings
- More building and fire code changes are requested, such as allowing tenant improvement treatment to create residential uses within a portion of an office building
- Post-pandemic, more flexible zoning and codes and more help needed for new work and housing needs

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Case study 4: Transforming Retail Malls

- Pandemic highlighted vacant malls, especially enclosed malls which LA County prohibited from reopening for many months when retail with outdoor entrances had already been allowed to reopen
- Hudson Pacific's Westside Pavilion was initially proposed for conversion to creative office space for Google, which later downsized; project's sale to UCLA for university uses announced in late 2023
- Movie theaters present case studies for repositioning; many small towns have vacant older theaters and new pandemic viewing habits transformed the economics of theaters
- Fully residential conversions are difficult, but increasing mixed uses at shopping centers has seen real success; Westfield's University Town Center (UTC) in San Diego now features adjacent residential, Westfield Century City includes grocery store and medical offices; flexible zoning works!

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OUTLINE OF BACKGROUND INFORMATION ON KEY TOPICS

I. Government land use restrictions and permissions

A. Zoning

State laws vest cities and counties with the authority to create geographic boundaries and regulate land uses, buildings and structures through zoning laws and regulations. Within any zone, regulations must be uniform for the buildings and land uses within that zone, but these regulations can be different for other zones. Jurisdictions identify the permitted zone for any individual property and the uses of that property, as well as the height, bulk, and other physical aspects of development on that property must be consistent with the zoning regulations.

Accordingly, where a potential exists to consider the redevelopment or repositioning of a distressed property, the applicable zoning of the site must be investigated including the jurisdiction where the site is located. This is often a city but if the property is located in an unincorporated area, the land use authority usually lies with the local county government. If the redevelopment or repositioning will result in a change of use or change in the physical structure, it may be necessary to obtain a change in the zoning of the site in order to permit such redevelopment or repositioning.

In many jurisdictions, the existing structures or land uses will have been approved in prior years by the local government through a specific zoning approval which generated a list of applicable zoning conditions or requirements. In that event, the necessary changes for the redevelopment or repositioning may include changes to the previously adopted conditions.

B. Building codes, Fire codes, Disabled Access and other applicable rules including historic preservation

In addition to the necessary zoning approvals to ensure the proposed changes are consistent with planning rules, local governments also have the authority to issue permits for construction, renovation and other necessary activities. The building department also ensures that conformity with other applicable codes such as fire safety and disabled access are required. In many situations, the redevelopment or repurposing of an existing building can create challenges because the building was originally built in conformance with earlier codes, and compliance with the most current rules may be expensive or infeasible.

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Note that historic preservation requirements may exist for older buildings and be applicable on the local, state and/or federal level; in the event of historic status, other zoning incentives or relaxation of rules under certain adaptive reuse rules may not be available. Historic properties require additional analysis to ensure viable reuse approaches.

C. Adaptive Reuse rules.

Some jurisdictions, including the City of Los Angeles, have addressed the challenges of changing building codes through adopting special rules for the reuse of older buildings. The City of Los Angeles adopted its adaptive reuse rules for Downtown Los Angeles (DTLA) around 2000, and provided that buildings built in 1974 or earlier were eligible for a separate set of compliance rules in order to facilitate the conversion of older buildings. This successfully resulted in the conversion of many older office buildings into apartments and lofts, contributing to an economic revival for parts of DTLA.

The surplus of retail space immediately after the pandemic seems to have right-sized itself to some extent, though there are vacant shopping malls in many jurisdictions which are being evaluated for potential conversion.

Post-pandemic, the demand for more flexible adaptive reuse for office buildings has grown with the dramatic reduction in office occupancy, a trend which has reduced the value of many buildings far below their acquisition prices.

Numerous studies have considered the potential to address housing shortages by converting more surplus commercial buildings. These include a study by the Turner Center at Berkeley, <https://turnercenter.berkeley.edu/wp-content/uploads/2021/11/Adaptive-Reuse-November-2021.pdf>, which pointed out that the specific characteristics of a building must be carefully studied to make conversion feasible.

Another in-depth analysis, conducted by Rand and published in 2022, concluded that hotels and motels can be readily converted but estimated that perhaps 10% of the housing need in Los Angeles County could be met by commercial building conversions. https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1300/RRA1333-1/RAND_RRA1333-1.pdf

The appendices to the Rand report contain some interesting data including maps of potential uses to be converted. https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1300/RRA1333-1/RAND_RRA1333-2.appendixes.pdf

Following up on the success of the 2000 ordinance in DTLA, the advocacy organization Central City Association is now working with the City to broaden the geographic applicability of the City's adaptive use ordinance beyond downtown and to expand the eligible building stock. Though the original ordinance required a building to be over 25

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years old for eligibility, the current City draft ordinance could be applied to buildings over 15 years old without a discretionary zoning approval, and to buildings between 5 and 15 years old with such an approval. The current draft of the expanded ordinance can be found in the following link. https://planning.lacity.gov/odocument/43763ba4-eeae-4468-8131-0750a32c9d98/Citywide_ARO_Draft_Ordinance_May_2023.pdf

Since as noted above provisions of the fire code can also be challenging with adaptive reuse, a working group is also studying fire code issues.

https://www.ccala.org/clientuploads/directory/whitepapers/CCA_Issue_Brief-Building_and_Fire_Code_Updates_MARCH_2024.pdf

II. Obtaining land use entitlements and approvals

A. Local government processes

Applications for redevelopment and repositioning of properties may require both discretionary and ministerial approvals. **Discretionary** approvals are those which require the exercise of judgment or discretion by a public agency, while **ministerial** approvals apply a checklist or clear requirements to the facts.

Discretionary approvals include zone changes and various permissions to change uses or building characteristics within a zone, such as variances or conditional use permits.

- With a **variance**, permission is given to exceed or vary from otherwise applicable limitations, such as allowing additional height above otherwise specified limits where such height is deemed appropriate.
- Since a zone often includes both uses permitted by right, such as residential uses in a residential zone, and uses allowed only by **conditional use permit**, such as a hotel use in a residential zone as long as required conditions can be satisfied, a conditional use permit may be needed to obtain permission for a use that would otherwise not be allowed in a zone.

Where a discretionary approval is needed, a public hearing or public review of the request is usually required. In addition, in California, a discretionary approval requires that the local agency conduct the appropriate analysis under the **California Environmental Quality Act (“CEQA”)**. Though a discussion of CEQA is outside the scope of this overview, note that such analysis can be time-consuming – and accordingly one of the major advantages of the Los Angeles adaptive reuse ordinance has been the presumption that adaptive reuse projects are exempt from CEQA.

If a public process is involved, including CEQA, the need for public review and the likelihood of public comment and potential objections can create significantly longer timelines for a redevelopment or repositioning approval. Moreover, in California, such public processes often create opportunities for construction unions or anti-growth

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advocacy groups or other interests, including competing businesses, to become engaged in the process.

Where approvals can be kept to the ministerial level, CEQA is not required and the process can generally be conducted much more quickly, though the technical requirements for compliance may still be costly and take significant time to navigate.

B. Appeals and litigation challenges

Once a discretionary approval is obtained, it may still be subject to appeals and eventually to litigation challenges, especially under CEQA. As noted above, opponents may arise who prolong an approval process.

III. Environmental challenges and costs of remediation; government programs and reuse goals.

A. Protecting new users from liability for prior contamination to encourage reuse.

There are many examples of large properties contaminated by their earlier uses, such as former defense manufacturing facilities. One such example is the former Lockheed site in Burbank, where the City's redevelopment agency worked with federal authorities for decades and eventually succeeded in reusing major areas that had previously been contaminated.

An EPA study describing these success stories provides some excellent examples.

<https://semspub.epa.gov/work/HQ/100002333.pdf>

B. Voluntary agreements for bona fide purchasers.

In addition to federal efforts, state laws can encourage the reuse of brownfields and contaminated properties by setting achievable standards for cleanups. Since California's prior system of Redevelopment Agencies was dissolved over a decade ago, recent successes have occurred with the State's Land Reuse and Revitalization Act. The State's Department of Toxic Substances Control, or DTSC, offers an excellent outline of that program. See

<https://dtsc.ca.gov/brownfields/california-land-reuse-and-revitalization-act-clrra-quick-reference-guide/>

IV. Community safety, public transportation, homelessness issues

Where an area includes a number of distressed or vacant properties, such as the recently well-publicized example of downtown San Francisco, issues can arise as to concerns

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about public safety. A number of downtowns have had particularly low vacancy rates even years after the pandemic, and their public transportation systems and other public infrastructure have suffered as a result, with New York City as another example.

In these situations, the government intervention for distressed properties may take the form of additional support for policing, transit patrols and community safety efforts.

Other situations that involve distressed properties may include areas where unhoused people are camping or sleeping in the streets. The City of Los Angeles has made a tremendous push in recent years to address this situation, including creating programs to purchase both distressed and market assets such as apartment buildings and motels in order to convert them to housing. There are many interesting examples of distressed property solutions in the homelessness and affordable housing area and we will discuss several during our panel.

V. Affordable housing and incentive zoning approaches.

With the tremendous need for more housing that is affordable to lower income households, local governments have utilized both carrots and sticks to encourage affordable housing development by the private sector. Where redevelopment or repositioning of properties may involve housing development, consideration should be given to the applicable requirements or opportunities in connection with the inclusion of affordable housing units. An appendix including a brief outline with details on California's state-mandated density bonus program and a Los Angeles incentive program is attached.

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Government’s Role in Revitalizing Distressed Real Estate

**ENCOURAGING AFFORDABLE HOUSING – EXAMPLES OF MANDATORY
AND VOLUNTARY INCENTIVE ZONING IN CALIFORNIA**

The State of California has incentive zoning provisions including the Density Bonus Law, which offers favorable development requirements for housing in exchange for agreeing to include a percentage of affordable units. Many local cities have created their own programs, including amending zoning codes to encourage development of affordable housing with incentive zoning to encourage voluntary participation. Other programs have mandated affordable housing through “inclusionary zoning” programs which require that a percentage of affordable housing be included in all new housing projects.

Through a voter-adopted initiative known as Measure JJJ, the City of Los Angeles created the Transit Oriented Communities Affordable Housing Incentive Program (“TOC Program”).¹ Measure JJJ required the Department of City Planning to create TOC Guidelines for all housing developments located within one-half mile of a major transit stop. The TOC Guidelines provide zoning incentives for development in accordance with the TOC Program.²

I. MANDATORY INCLUSIONARY ZONING

A. DTLA 2040 and LA County

Two recently adopted plans in Los Angeles mandate the inclusion of affordable housing units in all housing projects. The County of LA adopted its plan for unincorporated areas of the County in 2020, requiring that with limited exceptions, all rental and for sale projects including affordable set-aside units. After updated financial feasibility studies in 2023, the County is considering changes to its ordinance.

The City of LA recently adopted its new Community Plan Update for Downtown Los Angeles, known as DTLA 2040. That plan includes mandatory inclusionary zoning for residential development projects.

Critics of mandatory inclusionary zoning believe that such requirements limit housing production given the financial challenges created by the need to subsidize affordable units in market projects without government assistance for such subsidies. Some advocate that incentive zoning approaches are more likely to generate both affordable and market units. Experience with LA’s TOC Program indicates that its incentives have been helpful in generating housing units.

¹ LAMC 12.22 A.31

² *TOC Guidelines*, City of Los Angeles Department of City Planning (September 22, 2017; rev. February 26, 2018)

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II. INCENTIVE ZONING AND CALIFORNIA’S DENSITY BONUS LAW

California’s Density Bonus Law is a state mandate that entitles developers who provide specified levels of inclusionary housing to certain incentive zoning benefits.³ The Bonus Density Law provides incentive zoning to developers which provide affordable housing for various income levels or for a particular at-risk population, including veterans, homeless, and elderly persons. The incentive zoning takes the form of increased density and reductions in required parking, setbacks, and minimum square footage.

A. Density Bonus

The density bonus provided under this law scales based on the number and nature of the inclusionary housing. The maximum density bonus available is 35% and can be achieved by a development which provides at least 11% of the development capacity for very-low-income residents, 20% for low-income residents, or 40% for moderate-income residents. In addition to the density bonus, the Density Bonus Law also requires the provision of an additional zoning incentive for projects which meet the inclusionary housing threshold.

B. Parking Reduction

Reducing parking requirements can lower housing prices and allow land to be used more efficiently, and policies for parking reduction may work best in transit-oriented communities, senior housing projects, areas with low car ownership, or in housing that provides ride sharing or alternative transportation modes. These parking incentives could take the form of unbundled parking, waiver of off-street parking requirements, and pedestrian amenities.

The State’s Density Bonus Law allows for reduced parking requirements in qualifying developments.⁴ For developments which provide at least 11% of the development’s capacity to very-low-income units, or 20% lower-income units, and are within one-half mile of a major transit stop, the parking requirements shall be lowered to 0.5 spaces per bedroom. This requirement can be lowered further to 0.5 spaces per unit for developments which are 100% lower-income units.

C. Waiver or Reduction of Local Development Standards

As a state law, the Density Bonus Law provides incentive zoning by exemption or reduction of local zoning requirements.⁵ The applicable city or county is not permitted to apply any development standards which physically preclude the construction of the development at the permitted density and its granted incentives. Local development standards which have been waived or relaxed under this law include setback and lot coverage requirements.

³ *Cal Gov’t Code* § 65915(b)(1)

⁴ *Cal Gov’t Code* § 65915(p)(1)

⁵ *TOC Guidelines* at III.2

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III. INCENTIVE ZONING UNDER THE CITY OF LOS ANGELES' TOC GUIDELINES

The TOC Program aims to creating housing development that promote equality and sustainable living by offering a mix of uses close to transportation hubs to support households at all income levels, as well as building densities, parking policies, and urban design elements that support public transportation ridership and reduce automobile dependency. In furtherance of these objectives, the TOC Guidelines provide incentive zoning for inclusionary housing developments through improved density, parking, setback, open space, lot coverage, and height requirements.

Housing developments built within a designated TOC Incentive Area are eligible to receive the base zoning incentives. There are four tiers of TOC Incentive Area (“Tiers”); the Tiers are determined based on the distance from the development to a major transit stop and the type of major transit stop. Tier 1 is the lowest level of incentive area; Tier 4 is the highest. To qualify for the base zoning incentives, housing developments in each Tier must provide a specified number of moderate, low, or extremely low income housing within the development. Eligible housing developments may also receive additional zoning incentives if they satisfy additional requirements such as higher proportions of affordable housing, and adhering to specified labor standards. Zoning incentives are based on the maximum density allowed by the zoning prior to any incentive increase provided under the TOC Guidelines.

A. Base Zoning Incentives

1. Residential Density

Eligible housing developments shall be granted an increase in the maximum residential density based on the development’s Tier.⁶ Developments in Tier 1 receive an increase of 50% of the allowable number of dwelling units permitted under the applicable zoning; Developments in Tier 4 receive an increase of 80%.

Eligible housing developments shall also receive an increase in the maximum allowable floor area ratio (“FAR”) based on the development’s Tier.⁷ Developments in Tier 1 receive an increase of up to 40%, or a FAR increase resulting in at least 2.75:1 in commercial zones, whichever is greater. Developments in Tier 4 receive an increase of up to 55%, or a FAR increase resulting in at least 4.25:1 in commercial zones, whichever is greater. For this incentive, any additional floor area shall be utilized only by residential uses.

2. Parking Reduction

Parking incentive zoning applies to all units within an eligible housing development, not just the restricted affordable units.⁸ Developments in Tiers 1, 2, and 3 shall not require more than

⁶ *Id.* at VI.1.a

⁷ *Id.* at VI.1.b

⁸ *Id.* at VI.2

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0.5 spaces per bedroom. Developments in Tier 2 shall not require more than 1 space per unit, regardless of the number of bedrooms. Developments in Tier 3 shall not require more than 0.5 spaces per unit. Developments in Tier 4, and developments which are comprised entirely of restricted affordable units, shall not require any parking for residential units. Mixed-use projects may reduce the non-residential parking requirements for any ground-floor non-residential use. Developments in Tier 1 may receive up to a 10% reduction in the non-residential parking requirement; Developments in Tier 4 may receive up to a 40% reduction.

B. Additional Incentives

Eligible housing developments may apply for additional incentives, including reductions in restrictions on setback, open space, lot coverage, lot width and height.

1. Yard and Setback Requirements

Eligible housing developments in residential zones may utilize a reduction in yard setbacks.⁹ Front yard setbacks are limited to the average of the front yard setbacks of adjoining buildings on the same street frontage.

Developments in Tiers 1 and 2 may select either the reduction in front yard setback or in side or rear yard setback. Developments in Tiers 3 and 4 may select the reduction in front yard setback and an additional side or rear yard setback.

Tiers 1 and 2 may utilize a reduction of 25% and 30% in the required width or depth of one individual side or rear yard setback, respectively. Tiers 3 and 4 may utilize a reduction of 30% and 35% in the required width or depth of two individual side or rear yard setbacks, respectively.

2. Open Space

Developments in Tiers 1 and 2 may utilize a reduction in required open space up to 20%; developments in Tiers 3 and 4 may utilize a reduction up to 25%.¹⁰

3. Lot Coverage

Developments in Tiers 1 and 2 may utilize an increase in maximum lot coverage up to 25%; developments in Tiers 3 and 4 may utilize an increase up to 35%.

Developments in any Tier may utilize a decrease in minimum lot width up to 25%.

4. Height

⁹ *Id.* at VII.1.a

¹⁰ *Id.* at VII.1.b

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Eligible housing developments may receive increases in total height and transitional height allowances.¹¹ These increased allowances apply to the entirety of the parcel, regardless of the number of underlying height limits. Developments in Tiers 1 and 2 are permitted one additional story, up to 11 additional feet. Developments in Tier 3 are permitted two additional stories, up to 22 additional feet. Developments in Tier 4 are permitted three additional stories, up to 33 additional feet. However, on lots which have a height limit of 45 feet or less, or are located within a specific plan that regulates height, incentive zoning increases of greater than 11 feet must be stepped back from the face of the ground floor by at least 15 feet.

Eligible housing developments may also receive increases in transitional height allowances.¹² Developments in Tiers 1 and 2 shall have the building height limit stepped back at a 45 degree angle as measured from a horizontal plane originating 15 feet above grade at the property line abutting the most restrictive adjoining lot. Developments in Tier 3 shall have the building height limit stepped back at a 45 degree angle as measured from a horizontal plane originating 25 feet above grade at the property line abutting the most restrictive adjoining lot. Developments in Tier 4 shall have the building height limit stepped back, within the first 25 feet of the property line abutting a RW1 or more restrictive zone, at a 45 degree angle as measured from a horizontal plane originating 25 feet above grade at the property line.

IV. ADDITIONAL OPTIONS FOR INCENTIVE ZONING

Though California’s Density Bonus Law has been repeatedly revised to provide greater incentives for the development of inclusionary housing, the state still suffers from a dramatic shortfall of housing. LA’s TOC process has been utilized in many projects to date, but Los Angeles also suffers from insufficient housing supply. Other concepts which have been considered are summarized below.

A. Fee Waiver or Deferral

Providing fee waivers or deferrals to allow for later payment of fees could be very helpful. This should apply to zoning applications as well as design review and building permit fees.

B. Expedited Permitting Process

An expedited permitting process can be an effective incentive for the development of affordable housing. The City of Los Angeles is accelerating affordable housing projects with Mayor directives, as one example of an incentive.

C. Tax Exemptions

The provision of direct or indirect financial assistance through public subsidy, tax increment financing, and tax abatement are all critically important tools for affordable housing.

¹¹ *Id.* at VII.1.g

¹² *Id.* at VII.1.g.ii

APPENDIX B –

Sasha Wisotsky Kergan

State of California Business, Consumer Services & Housing Agency

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EXAMPLES OF POLICIES AND PROGRAMS IN CALIFORNIA

1. Statewide Housing Plan. [Digital version and data tools \(https://statewide-housing-plan-cahcd.hub.arcgis.com\)](https://statewide-housing-plan-cahcd.hub.arcgis.com) are most accessible / usable. If preferred, [PDF version](https://www.hcd.ca.gov/docs/statewide-housing-plan.pdf) of the Statewide Housing Plan (<https://www.hcd.ca.gov/docs/statewide-housing-plan.pdf>)
2. Homekey report: https://www.hcd.ca.gov/policy-research/plans-reports/docs/hcd100_homekeyreport_v18.pdf
3. Commercial zoning and adaptive reuse series from Turner Center (<https://turnercenter.berkeley.edu/research-and-policy/commercial-zoning-paper-series/>)
4. Development in commercial zones through California Assembly Bill 2011 and Senate Bill 6 - Explainer (<https://www.hklaw.com/en/insights/publications/2022/09/california-legislature-creates-pathways-for-residential-development>)

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ENCOURAGING AFFORDABLE HOUSING – EXAMPLES OF MANDATORY AND VOLUNTARY INCENTIVE ZONING IN CALIFORNIA

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Critics of mandatory inclusionary zoning believe that such requirements limit housing production given the financial challenges created by the need to subsidize affordable units in market projects without government assistance for such subsidies. Some advocate that incentive zoning approaches are more likely to generate both affordable and market units. Experience with LA’s TOC Program indicates that its incentives have been helpful in generating housing units.

II. INCENTIVE ZONING AND CALIFORNIA’S DENSITY BONUS LAW

California’s Density Bonus Law is a state mandate that entitles developers who provide specified levels of inclusionary housing to certain incentive zoning benefits.³ The Bonus Density

¹ LAMC 12.22 A.31

² *TOC Guidelines*, City of Los Angeles Department of City Planning (September 22, 2017; rev. February 26, 2018)

³ *Cal Gov’t Code* § 65915(b)(1)

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Law provides incentive zoning to developers which provide affordable housing for various income levels or for a particular at-risk population, including veterans, homeless, and elderly persons. The incentive zoning takes the form of increased density and reductions in required parking, setbacks, and minimum square footage.

A. Density Bonus

The density bonus provided under this law scales based on the number and nature of the inclusionary housing. The maximum density bonus available is 35% and can be achieved by a development which provides at least 11% of the development capacity for very-low-income residents, 20% for low-income residents, or 40% for moderate-income residents. In addition to the density bonus, the Density Bonus Law also requires the provision of an additional zoning incentive for projects which meet the inclusionary housing threshold.

B. Parking Reduction

Reducing parking requirements can lower housing prices and allow land to be used more efficiently, and policies for parking reduction may work best in transit-oriented communities, senior housing projects, areas with low car ownership, or in housing that provides ride sharing or alternative transportation modes. These parking incentives could take the form of unbundled parking, waiver of off-street parking requirements, and pedestrian amenities.

The State's Density Bonus Law allows for reduced parking requirements in qualifying developments.⁴ For developments which provide at least 11% of the development's capacity to very-low-income units, or 20% lower-income units, and are within one-half mile of a major transit stop, the parking requirements shall be lowered to 0.5 spaces per bedroom. This requirement can be lowered further to 0.5 spaces per unit for developments which are 100% lower-income units.

C. Waiver or Reduction of Local Development Standards

As a state law, the Density Bonus Law provides incentive zoning by exemption or reduction of local zoning requirements.⁵ The applicable city or county is not permitted to apply any development standards which physically preclude the construction of the development at the permitted density and its granted incentives. Local development standards which have been waived or relaxed under this law include setback and lot coverage requirements.

III. INCENTIVE ZONING UNDER THE CITY OF LOS ANGELES' TOC GUIDELINES

The TOC Program aims to creating housing development that promote equality and sustainable living by offering a mix of uses close to transportation hubs to support households at all income levels, as well as building densities, parking policies, and urban design elements that support public transportation ridership and reduce automobile dependency. In furtherance of

⁴ *Cal Gov't Code* § 65915(p)(1)

⁵ *TOC Guidelines* at III.2

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these objectives, the TOC Guidelines provide incentive zoning for inclusionary housing developments through improved density, parking, setback, open space, lot coverage, and height requirements.

Housing developments built within a designated TOC Incentive Area are eligible to receive the base zoning incentives. There are four tiers of TOC Incentive Area (“Tiers”); the Tiers are determined based on the distance from the development to a major transit stop and the type of major transit stop. Tier 1 is the lowest level of incentive area; Tier 4 is the highest. To qualify for the base zoning incentives, housing developments in each Tier must provide a specified number of moderate, low, or extremely low income housing within the development. Eligible housing developments may also receive additional zoning incentives if they satisfy additional requirements such as higher proportions of affordable housing, and adhering to specified labor standards. Zoning incentives are based on the maximum density allowed by the zoning prior to any incentive increase provided under the TOC Guidelines.

A. Base Zoning Incentives

1. Residential Density

Eligible housing developments shall be granted an increase in the maximum residential density based on the development’s Tier.⁶ Developments in Tier 1 receive an increase of 50% of the allowable number of dwelling units permitted under the applicable zoning; Developments in Tier 4 receive an increase of 80%.

Eligible housing developments shall also receive an increase in the maximum allowable floor area ratio (“FAR”) based on the development’s Tier.⁷ Developments in Tier 1 receive an increase of up to 40%, or a FAR increase resulting in at least 2.75:1 in commercial zones, whichever is greater. Developments in Tier 4 receive an increase of up to 55%, or a FAR increase resulting in at least 4.25:1 in commercial zones, whichever is greater. For this incentive, any additional floor area shall be utilized only by residential uses.

2. Parking Reduction

Parking incentive zoning applies to all units within an eligible housing development, not just the restricted affordable units.⁸ Developments in Tiers 1, 2, and 3 shall not require more than 0.5 spaces per bedroom. Developments in Tier 2 shall not require more than 1 space per unit, regardless of the number of bedrooms. Developments in Tier 3 shall not require more than 0.5 spaces per unit. Developments in Tier 4, and developments which are comprised entirely of restricted affordable units, shall not require any parking for residential units. Mixed-use projects may reduce the non-residential parking requirements for any ground-floor non-residential use.

⁶ *Id.* at VI.1.a

⁷ *Id.* at VI.1.b

⁸ *Id.* at VI.2

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Developments in Tier 1 may receive up to a 10% reduction in the non-residential parking requirement; Developments in Tier 4 may receive up to a 40% reduction.

B. Additional Incentives

Eligible housing developments may apply for additional incentives, including reductions in restrictions on setback, open space, lot coverage, lot width and height.

1. Yard and Setback Requirements

Eligible housing developments in residential zones may utilize a reduction in yard setbacks.⁹ Front yard setbacks are limited to the average of the front yard setbacks of adjoining buildings on the same street frontage.

Developments in Tiers 1 and 2 may select either the reduction in front yard setback or in side or rear yard setback. Developments in Tiers 3 and 4 may select the reduction in front yard setback and an additional side or rear yard setback.

Tiers 1 and 2 may utilize a reduction of 25% and 30% in the required width or depth of one individual side or rear yard setback, respectively. Tiers 3 and 4 may utilize a reduction of 30% and 35% in the required width or depth of two individual side or rear yard setbacks, respectively.

2. Open Space

Developments in Tiers 1 and 2 may utilize a reduction in required open space up to 20%; developments in Tiers 3 and 4 may utilize a reduction up to 25%.¹⁰

3. Lot Coverage

Developments in Tiers 1 and 2 may utilize an increase in maximum lot coverage up to 25%; developments in Tiers 3 and 4 may utilize an increase up to 35%.

Developments in any Tier may utilize a decrease in minimum lot width up to 25%.

4. Height

Eligible housing developments may receive increases in total height and transitional height allowances.¹¹ These increased allowances apply to the entirety of the parcel, regardless of the number of underlying height limits. Developments in Tiers 1 and 2 are permitted one additional story, up to 11 additional feet. Developments in Tier 3 are permitted two additional stories, up to 22 additional feet. Developments in Tier 4 are permitted three additional stories, up to 33 additional feet. However, on lots which have a height limit of 45 feet or less, or are located

⁹ *Id.* at VII.1.a

¹⁰ *Id.* at VII.1.b

¹¹ *Id.* at VII.1.g

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within a specific plan that regulates height, incentive zoning increases of greater than 11 feet must be stepped back from the face of the ground floor by at least 15 feet.

Eligible housing developments may also receive increases in transitional height allowances.¹² Developments in Tiers 1 and 2 shall have the building height limit stepped back at a 45 degree angle as measured from a horizontal plane originating 15 feet above grade at the property line abutting the most restrictive adjoining lot. Developments in Tier 3 shall have the building height limit stepped back at a 45 degree angle as measured from a horizontal plane originating 25 feet above grade at the property line abutting the most restrictive adjoining lot. Developments in Tier 4 shall have the building height limit stepped back, within the first 25 feet of the property line abutting a RW1 or more restrictive zone, at a 45 degree angle as measured from a horizontal plane originating 25 feet above grade at the property line.

IV. ADDITIONAL OPTIONS FOR INCENTIVE ZONING

Though California's Density Bonus Law has been repeatedly revised to provide greater incentives for the development of inclusionary housing, the state still suffers from a dramatic shortfall of housing. LA's TOC process has been utilized in many projects to date, but Los Angeles also suffers from insufficient housing supply. Other concepts which have been considered are summarized below.

A. Fee Waiver or Deferral

Providing fee waivers or deferrals to allow for later payment of fees could be very helpful. This should apply to zoning applications as well as design review and building permit fees.

B. Expedited Permitting Process

An expedited permitting process can be an effective incentive for the development of affordable housing. The City of Los Angeles is accelerating affordable housing projects with Mayor directives, as one example of an incentive.

C. Tax Exemptions

The provision of direct or indirect financial assistance through public subsidy, tax increment financing, and tax abatement are all critically important tools for affordable housing.

¹² *Id.* at VII.1.g.ii

Faculty

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Larissa Gotguelf is a managing director with FTI Consulting, Inc. in Los Angeles. She is a real estate and restructuring consulting professional with more than 20 years of experience in commercial real estate, restructuring, interim management, business strategy and operations and litigation consulting. Ms. Gotguelf has provided transaction and financial advisory services in consulting, restructuring and litigation settings to real estate investors, developers, lenders, loan servicers, corporate real estate users, CMBS investors, and receivers and trustees. She also has experience in interim management, real estate leasing and negotiations, acquisition and disposition, site selection, corporate finance, and business strategy and portfolio analysis. Ms. Gotguelf has advised clients in matters involving different property types, including retail, hotel and leisure, land, office, multifamily, healthcare, senior housing and fractional ownership. These assignments have involved financial modeling, market research, debt restructuring, damages analysis, valuation, claims analysis, disposition strategy and liquidation, CMBS transaction, and underwriting review and due diligence. In addition to real estate, Ms. Gotguelf has worked with organizations in investment management, health care, financial services and education. Her clients have included such organizations as Aequis Receivership, Midland Loan Services, Loma Linda University Medical Center, LNR, ORIX, Bank of America, JPMorgan-Chase, Ambac, Residential Capital, Diablo Grande and Beazer. She has worked with many leading law firms, including Milbank, Jones Day, Morrison & Foerster, Troutman Pepper, Latham & Watkins, Arnold & Porter, Sheppard Mullin, O'Melveny & Myers, and Schwabe, Williamson & Wyatt, among others. Ms. Gotguelf has been invited to speak on restructuring and real estate industry topics by the Turnaround Management Association, ABI, and several other professional associations and firms. Prior to joining FTI Consulting, she was a senior consultant in the Strategy and Operations practice of Deloitte Consulting. Prior to that, she served as a real estate advisor and a vice president of The

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