

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2345 (Gonzalez) – As Amended May 11, 2020

**SUBJECT:** Planning and zoning: density bonuses: affordable housing

**SUMMARY:** Revises Density Bonus Law to increase the maximum allowable density and the number of concessions and incentives a developer can seek. Specifically, **this bill:**

- 1) Requires a developer to receive four incentives and concessions for projects that include the following percentage of total units: 31 percent for lower income households, 13 percent for very low income households, and 31 percent for moderate income households in a common interest development.
- 2) Requires a developer to receive five incentives and concessions for projects that include the follow percentage of total units: 33 percent for lower income households, 15 percent for very low income households, and 33 percent for moderate income households in a common interest development.
- 3) Requires a developer to receive three incentives or concession for projects that include 12 percent rather than 15 percent for very low income households.
- 4) Requires a developer to receive six instead of four incentives and concessions for projects that are within one-half mile of transit that are 100 percent affordable to lower income households, although 20 percent may be affordable to moderate income households.
- 5) Gives a local government discretion to grant additional waivers or reductions in development standards for projects that are within one-half mile of transit and are 100 percent affordable to lower income households, although 20 percent may be available to moderate income households.
- 6) Extends the density bonuses that a developer can request as follows (additions in bold, underlined, and italics):

<b>Very Low Income Density Bonus</b>	
Percent Very Low Income Units	Percent Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
<b><u>12</u></b>	<b><u>38.75</u></b>
<b><u>13</u></b>	<b><u>42.5</u></b>
<b><u>14</u></b>	<b><u>46.25</u></b>
<b><u>≥15</u></b>	<b><u>50</u></b>

Low Income Density Bonus	
Percent Low Income Units	Percent Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
<b><u>16</u></b>	<b><u>29</u></b>
17	30.5
18	32
19	33.5
20	35
<b><u>21</u></b>	<b><u>38.75</u></b>
<b><u>22</u></b>	<b><u>42.5</u></b>
<b><u>23</u></b>	<b><u>46.25</u></b>
<b><u>24</u></b>	<b><u>50</u></b>
<b><u>25</u></b>	<b><u>50</u></b>
<b><u>26</u></b>	<b><u>50</u></b>
<b><u>27</u></b>	<b><u>50</u></b>
<b><u>28</u></b>	<b><u>50</u></b>
<b><u>29</u></b>	<b><u>50</u></b>
<b><u>30</u></b>	<b><u>50</u></b>
<b><u>31</u></b>	<b><u>50</u></b>
<b><u>32</u></b>	<b><u>50</u></b>
<b><u>≥ 33</u></b>	<b><u>50</u></b>

Moderate Income Density Bonus	
Percent Moderate Income Units	Percent Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17

23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
<b><u>41</u></b>	<b><u>38.75</u></b>
<b><u>42</u></b>	<b><u>42.5</u></b>
<b><u>43</u></b>	<b><u>46.25</u></b>
<b><u>≥ 44</u></b>	<b><u>50</u></b>

- 7) Defines “natural or constructed impediments,” for the purpose of calculating the distance of a project from a major transit stop, to include, but not be limited to, freeways, rivers, mountains, and bodies of water, but does not include residential structures, shopping centers, parking lots, or rails used for transit.
- 8) Provides that the distance of a development from a major transit stop shall be measured from any point located on the property of the proposed development to any point on the property on which the major transit stop is located, including any parking lot owned by the transit authority or other local agency operating the major transit stop.
- 9) Reduces the amount of parking a local government can require of a developer requesting a density bonus as follows:
  - a) For two to three bedrooms from 2 spaces to 1.5 spaces; and
  - b) For four or more bedrooms 2.5 to 2 spaces.
- 10) Reduce the amount of parking a local government can require for a development that includes the maximum amount of very-low income or low income housing units under density bonus law and that is with one-half mile of unobstructed access to mass transit, from 0.5 spaces per bedroom to 0.5 spaces per unit.

- 11) Reduces the amount of parking a local government can require of a 100 percent affordable development for lower income households within one-half mile of unobstructed access to mass transit, from 0.5 spaces per unit to zero spaces per unit.
- 12) Reduces the amount of parking a local government can require of a 100 percent affordable rental development for seniors 62 years or older, with either paratransit service or unobstructed access within one-half mile of a fixed bus route that operates eight times a day, from 0.5 spaces per unit to zero spaces per unit.
- 13) Provides that no reimbursement is required by this Act because a local government has the authority to levy service charges, fees, or assessments to pay for the program or level of services mandated by the Act.

**EXISTING LAW:**

- 1) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:
  - a) Ten percent of the total units of a housing development for lower income households;
  - b) Five percent of the total units of a housing development for very low-income households;
  - c) A senior citizen housing development or mobile home park;
  - d) Ten percent of the units in a common interest development (CID) for moderate-income households; and
  - e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons.
  - f) Twenty percent of the total units for lower income students in a student housing development, as specified.
- 2) Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however, request additional parking incentives or concessions):
  - a) Zero to one bedrooms: one onsite parking space;
  - b) Two to three bedrooms: two onsite parking spaces; and
  - c) Four or more bedrooms: two and one-half parking spaces.
- 3) Provides that if a rental development is 100 percent affordable to lower income families then, upon the request of a developer, a city, county, or city and county, the following parking ratios shall apply for the development:

- a) If the development is located within one-half mile of a “major transit stop” and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.
  - b) If the development is a for-rent housing development for individuals who are 62 years of age or older, the ratio shall not exceed 0.5 spaces per unit.
  - c) If the development is a special needs housing development, the ratio shall not exceed 0.3 spaces per unit.
- 4) Requires applicants to receive the following number of incentives or concessions:
- a) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, and at least 10 percent for moderate income persons and families in a common interest development.
  - b) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, and at least 20 percent for moderate income persons and families in common interest developments.
  - c) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, and at least 30 percent for moderate income persons and families in common interest developments.
- 5) Permits an applicant to submit to a local government a proposal for the specific incentives or concessions that the applicant requests, as specified, and allows the applicant to request a meeting with the local government.
- 6) Defines “concession or incentive” as:
- a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs;
  - b) Approval of mixed-use zoning in conjunction with the housing project, as specified; and
  - c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Author's statement:* According to the author, "California's Density Bonus Law has been on the books for 40 years, with a goal to boost mixed-income developments, but has failed to draw enough interest from developers. The City of San Diego took steps to enhance the state's existing program, and generated significant interest to build additional affordable and market-rate housing. Communities across California can take a page from the lessons learned in San Diego. Assembly Bill 2345 will expand the Density Bonus Law to provide the same enhancements adopted by the City of San Diego, and will help alleviate California's housing shortage. With more than 40 percent of all California households spending too much of their income on housing, this bill will provide developers the incentive to build the affordable homes we urgently need in California."

*Density bonus law:* Density bonus law was originally enacted in 1979, to help address the affordable housing shortage and to encourage development of more low- and moderate income housing units. Over 40 years later, the state faces the same affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the cities' zoned density in exchange for including extremely low, very low, low, and moderate income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

- Ten percent of the total units for lower income households;
- Five percent of the total units of a housing for very low income households;
- A senior citizen housing development or mobilehome park;
- Ten percent of the units in a common interest development for moderate income households;
- Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons; or
- Twenty percent of the total units for lower income students in a student housing development, as specified.

As part of the density bonus application, a developer may also request incentives, concessions and parking ratio reductions. The number of incentives and concessions, and the parking ratio reduction, vary depending on the percentage and type of affordable housing included in a project.

*Maximum density:* A developer can access a 35 percent density bonus and three concessions and incentives under existing law. To qualify for a 35 percent density bonus, a developer must restrict either 11 percent of the units in a development to very-low income households (making less than 50 percent of Area Median Income) or 20 percent to lower income households (at or below 80 percent of AMI). This bill would extend the density formula to a maximum density of 50 percent. A developer could access a 50 percent density bonus if between 24 to 33 percent of the units are restricted to low income units, 15 to 33 percent for very low income units; and 44 percent for moderate income. Committee staff notes that it is unclear why a developer would agree to include more than the lowest possible percentage of affordability to receive a 50 percent density bonus.

*Concessions and incentives:* In addition to an increase in density, a developer can request concessions under density bonus law to reduce the cost of the development and support the inclusion of the affordable housing units. Under existing law, a developer can receive up to three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development. This bill would allow a developer to receive four concessions and incentives for including additional density.

As discussed above, AB 2345 is based on the San Diego Affordable Homes Bonus Program, which allowed a developer to seek up to five concessions and incentives. San Diego found that developers only requested, at most, three concessions and incentives. It is important to note that developers are not required to take a density bonus to receive concessions and incentives, provided they include the required affordable housing units. Density bonus law is a balancing act between providing enough benefits for the developer to offset the inclusion of affordable housing units. In addition, density bonus law already requires a local government to provide waivers in development standards to accommodate the additional density allowed under density bonus law. The committee may wish to continue allowing a developer to seek up to three concessions and incentives (excluding 100 percent affordable projects), and instead adjust the density needed to access three concessions upward to reflect the changes proposed in other provisions of this bill.

*Impact on Measure JJJ:* In 2016, the voters of the City of Los Angeles approved the Transit Oriented Communities (TOC) Affordable Housing Incentive Program to added provisions to the municipal code to require developers requesting certain entitlements for residential projects to either provide affordable units or pay an in-lieu fee. Measure JJJ also required the Department of City Planning to create a program to further incentivize affordable housing near transit. Accordingly, the Transit Oriented Communities (TOC) Affordable Housing Incentive Program became effective on September 22, 2017. The program encourages affordable housing within a half mile of major transit stops by providing additional density, reduced parking, and other incentives for projects that include covenanted affordable units. JJJ provides a developer a 50 percent density bonus if 17 percent of the units in the development are reserved for very low income households. This bill would provide a 50 percent density bonus if a developer restricts 15 percent of the units to very low income households, which would conflict with JJJ. The committee may wish to consider if this issue should be addressed.

*Clarification to AB 1763:* In 2020, AB 1763 (Chiu), Chapter 666, created an enhanced density bonus for 100 percent affordable projects. If a project is within one-half mile of transit, then a developer can request no restriction on density and four incentives and concessions. A local government is explicitly prohibited from approving additional waivers or reductions in

development standards to make the project feasible. In San Mateo County, the board of supervisors recently approved a project under AB 1763 and wanted to approve additional waivers but was not able to because of this prohibition. This bill would give a local government discretion to approve additional waivers and reductions in development standards if requested by the developer.

*Parking:* Local governments apply minimum parking standards to housing developments that do not always reflect the demand from tenants for parking. Parking can add considerable cost to building housing, particularly if it is subterranean. The average construction cost per space, excluding land cost, in a parking structure in the United States is \$24,000 for aboveground parking and \$34,000 for underground parking. Certain types of parking — podium or subterranean — can increase parking costs by 6 percent or more relative to other types of parking.

To make a development more feasible, a developer can request a reduction in parking ratios as part of receiving a density bonus. A local government is required to approve the parking reductions if the developer meets the criteria required for the reduction. Parking reductions do not count toward the total number of concessions and incentives that a developer is entitled to receive, although some developers use a concession or incentive to further reduce parking requirements.

This bill would change the ratio of parking spaces that a developer could request for a housing development under density bonus law as follows:

<b>Type of Project</b>	<b># of bedrooms in the unit</b>	<b>½ mile from transit and maxed out affordable housing percent</b>	<b>Existing maximum parking requirement</b>	<b>Proposed maximum parking requirement</b>
Market Rate	Any	Yes	0.5/bedroom	0.5/unit
100 percent Affordable	Any	Yes	0.5/unit	None
Either	0-1	No	1/unit	1/unit
Either	2-3	No	2/unit	1.5/unit
Either	4+	No	2.5/unit	2/unit

*Arguments in support:* The sponsor of this bill, Circulate San Diego, writes in support, “Circulate supports this law because an identical effort in the City of San Diego has proven to substantially increase both the number of applications for use of the bonus program, as well as the total number of affordable and market rate homes permitted. Applications increased by 900 percent when San Diego enhanced its program. Additionally, applications saw a 473 percent increase for deed-restricted affordable units, and a 453 percent increase overall in units for mixed-income applications. This modest adjustment to an existing policy will have outsized positive impacts on housing affordability and availability across the state.



*Arguments in opposition:* The American Planning Association is opposed to this bill unless amended. They are concerned that the percentage of affordability is too low for the corresponding density. They are also concerned that the TOC program will be undermined by the changes proposed in this bill because they are not consistent with that program and could serve as an incentive to choose state density bonus law over the TOC, which requires 17 percent affordability for a project to receive a 50 percent density bonus. This bill requires 15 percent to receive a 50 percent bonus. They are also concerned that the number of incentives and concessions proposed is too high and also not commensurate with the amount of affordability required.

*Committee amendments:*

- 1) Grandfather in jurisdictions that have already amended their density bonus ordinances to allow for additional bonuses above those in state law to continue to operate.
- 2) Make technical changes to clarify changes to the parking provisions.
- 3) Add requirements to the annual production report (APR) that local governments submit as part of the housing element to capture data on the use of density bonus including but not limited to: percentage of affordability included, concessions and incentives requested, and parking reductions requested.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Circulate San Diego (Sponsor)  
Up for Growth California (Sponsor)  
Abundant Housing Los Angeles  
Align Finance Partners  
AMLI Residential  
Bay Area Council  
Bay Area Housing Advocacy Coalition  
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
California Chamber of Commerce  
California Housing Consortium  
California Housing Partnership Corporation  
California YIMBY  
Chan Zuckerberg Initiative  
City of San Diego  
Circulate San Diego Climate Action Campaign  
CREA LLC  
East Bay for Everyone  
Facebook  
Hitzke Development

Holland Partner Group  
LISC San Diego  
Los Angeles Business Council  
Malick Infill Development  
Monarch Group  
Moran & Company  
Mountain View YIMBY  
National Association of Social Workers, California Chapter  
Non-Profit Housing Association of Northern California  
Oakland Chamber of Commerce  
Pelosi Law Group  
Peninsula for Everyone  
People for Housing Orange County  
San Diego Housing Commission  
San Diego Housing Federation  
San Francisco Foundation  
San Francisco Housing Action Coalition  
San Francisco YIMBY  
San Luis Obispo YIMBY  
SV@HOME  
Silicon Valley Community Foundation  
SPUR  
TechEquity Collaborative  
The Chicago Federation  
TMG Partners  
Up for Growth California  
Urban Environmentalists  
Vitus  
Working Partnerships USA  
YIMBY Action  
YIMBY Neoliberal  
9 Individuals

*Support If Amended*

California Community Builders  
United Way of Greater Los Angeles

**Opposition**

4 Individuals

*Oppose Unless Amended*

AIDS Healthcare Foundation  
American Planning Association California Chapter  
California State Association of Counties

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