

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2372 (Gloria) – As Introduced February 14, 2018

AS PROPOSED TO BE AMENDED

SUBJECT: Planning and zoning: density bonus: floor area ratio bonus

SUMMARY: Provides that a local government may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio (FAR) bonus in lieu of a density bonus. Specifically, **this bill:**

- 1) Defines "Eligible housing development" as a development that satisfies all of the following criteria:
 - a) The development is a multifamily housing development that contains five or more residential units, exclusive of any other FAR bonus or incentive or concession awarded pursuant to this chapter.
 - b) The development is located within one of the following:
 - i. An urban infill site that is within a transit priority area; or
 - ii. One-half mile of a major transit stop.
 - c) The site of the development is zoned to allow residential use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for nonresidential use.
 - d) The applicant and the development satisfy the replacement requirements specified in state density bonus law.
 - e) The development includes at least 20 percent of the units, excluding any additional units allowed under a FAR bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income (AMI) and subject to an affordability restriction for a minimum of 55 years.
 - f) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use FAR bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation.
- 2) Defines "floor area ratio" as the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

- 3) Defines “floor area ratio bonus” as an allowance for an eligible housing development to utilize a FAR over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county.
- 4) Defines “major transit stop” as having the same meaning as defined in Section 21155 of the Public Resources Code.
- 5) Defines “transit priority area” as having the same meaning as defined in Section 21099 of the Public Resources Code.
- 6) Provides that a city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a FAR bonus, in lieu of a density bonus on the basis of dwelling units per acre.
- 7) Prohibits the city council or county board of supervisors from imposing any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.
- 8) Provides that, in the case of an eligible housing development that is zoned for mixed-use purposes, any FAR requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a FAR bonus in accordance with this section.
- 9) Provides that an applicant for a FAR bonus pursuant to this section may also submit to a city, county, or city and county a proposal for specific incentives or concessions pursuant to state density bonus law.

EXISTING LAW:

- 1) Defines “density bonus” as a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the local government.
- 2) Requires all local governments to adopt an ordinance that specifies how they will implement state density bonus law.
- 3) Provides that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a local government, that local government shall comply with state density bonus law.
- 4) Requires local governments to 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:

- a) Ten percent of the total units for lower income households;
 - b) Five percent of the total units of a housing for very low income households;
 - c) A senior citizen housing development or mobilehome park;
 - d) Ten percent of the units in a common-interest development (CID) for moderate-income households; or
 - e) Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons.
- 5) Requires local governments to provide an applicant for a density bonus concessions and incentives based on the number of below market-rate units included in the project as follows:
- a) One incentive or concession if the project includes at least 10% of the total units for low-income households, 5% for very low-income households, or 10% for moderate-income households in a CID;
 - b) Two incentives or concessions if the project includes at least 20% of the total units for low-income households, 10% for very low-income households, or 20% for moderate-income households in a CID; and
 - c) Three incentives or concessions if the project includes at least 30% of the total units for low-income households, 15% for very low-income households, or 30% for moderate-income households in a CID.
- 6) Provides that an applicant shall be ineligible for a density bonus or any other incentives or concessions if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very-low income households, unless the proposed housing development replaces those units, as specified.
- 7) 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.

- 8) Provides that if a development is 100% affordable to lower income families, then upon the request of a developer, a local government shall reduce the minimum parking requirements for the development, as follows:
- 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. The development must have either paratransit service or have unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
 - c) If the development is a special needs housing development, the ratio shall not exceed 0.3 spaces per unit. The development must have either paratransit service or have unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
- 9) Provides that when a developer agrees to include the maximum number of very low- or low-income units under density bonus law, and the development is within one-half mile of a major transit stop and with unobstructed access to the major transit stop from the development, then upon the request of the developer a local government shall not impose a parking ratio that exceeds 0.5 spaces per bedroom.
- a) Requires the above specified parking ratios to be inclusive of handicapped and guest parking.
 - b) Defines "unobstructed access" as a resident being able to access the transit stop without encountering natural or constructed impediments.
 - c) Defines a "major transit stop" as a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency-of-service interval of 15 minutes or less during the morning and afternoon peak commute periods.
 - d) Provides that a local government is not precluded from reducing or eliminating a parking requirement for developments of any type or location.
 - e) Allows a local government that conducted an area-wide or jurisdiction-wide parking study within the last seven years to impose a higher vehicular parking ratio that does not exceed the standard under Density Bonus Law, as specified.
 - f) Requires the local government which has completed a parking study and imposes a higher standard to make findings supporting the need for the higher parking ratio.

(Government Code Section 65915)

- 10) Provides a development bonus, as specified, when a commercial developer enters into an agreement for partnered housing to contribute affordable housing through a joint project or two separate projects encompassing affordable housing (Government Code Section 65915.7).

FISCAL EFFECT: None.

COMMENTS:

Need for this bill: According to the author, ""The CASA Housing Act provides an alternative building intensity-based system to calculate the amount of allowable residential development in areas where the General Plan currently only designates residential density in Dwelling Units per Acre (DU/acre) by using a FAR bonus based measurement system as well as reducing required parking. AB 2372 addresses the State's need to increase housing supply. This bill incentivizes the production of affordable workforce and low income housing along transit priority corridors by amending development standards through a new statewide opt-in program. This measure increases housing affordability without the use of publically-funded dollars."

Specifically, this bill:

- Creates a statewide opt-in program to increase housing near transit;
- Authorizes, upon the request of a developer in participating local governments, the use of a FAR based bonus calculation system for the development of new residential units,
 - At least 20% pre-FAR bonus units must be at or below 50% AMI,
- Applies to projects in any land use category that:
 - Allow residential uses with an existing Base Density of at least 20 DU/acre,
 - Do not include land designated as low residential density, open space, heavy commercial or industrial,
- Maintains that project height be regulated by the underlying base zone,
- Reduces parking requirements to 0.1 spaces per unit for all units at 120% AMI or less and .5 spaces per unit for market rate units.
- Provides that a developer may request the incentives or concessions found in state density bonus law; and
- Includes affordable housing replacement requirements found in state density bonus law.

Background: In 1979 the Legislature enacted density bonus law to help address the affordable housing shortage and to encourage development of more low- and moderate-income housing units. Density bonus is a tool to encourage the production of affordable housing that is used by both market rate and affordable housing developers. 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 to offset the cost the affordable units which will be offered at a lower rent, as low as 30% of AMI. Developers that seek a density bonus must agree to restrict very low- and low-income rental units to affordable levels for 55 years.

State law specifies concessions and incentives that a local government may include in its density bonus ordinance including a reduction in site development standards, or a modification of zoning code requirements, or architectural design requirements that exceed the minimum building standards, and approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development

and are compatible with the project and the surrounding area. A developer or city can also propose other regulatory incentives or concessions, subject to limitations specified in state law.

This bill would authorize a local government to adopt, as an alternative to density bonus in certain circumstances, a FAR bonus based on specified criteria.

Density vs. FAR: Density is the allowable number of dwelling units that are allowed per unit of lot area - for example, twenty DU/acre. It is a commonly used metric for residential development. FAR, on the other hand, measures building intensity. It is the ratio of a building or a project's floor area to its lot area, and is typically used to measure the intensity of commercial, office, industrial, and mixed-use projects. To calculate FAR, the gross square footage of a building is divided by the total area of its lot. A FAR of 1.0 means that floor area may equal lot area. A one-story building that covers an entire lot has an FAR of 1.0. A FAR of 2.0 means that the floor area may be up to twice as large as the lot area- for example a 20,000 square foot building on a 10,000 square foot lot has a FAR of 2.0, regardless of the number of stories.

Staff comment: This bill would create an opt-in program for local governments to adopt an ordinance creating a FAR bonus, as an alternative to a density bonus upon the request of a developer. Qualifying developments that provide at least 20% of pre-FAR bonus units for households at or below 50% AMI would be eligible to utilize a FAR bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county. Determining a building's allowable size based on FAR rather than DU/acre, incentivizes the production of more units- particularly smaller and more economical units. In light of the current housing crisis, the author hopes to encourage the production of these types of units near transit. As local governments may already choose to exceed state density bonus law, there is nothing under existing law that would prevent a local government from proactively developing a FAR bonus program.

Below is a mock-up of the bill as proposed to be amended:

SECTION 1.

Section 65917.2 is added to the Government Code, to read:

65917.2.

(a) As used in this section, the following terms shall have the following meanings:

(1) " Eligible housing development" means a development that satisfies all of the following criteria:

(A) The development is a multifamily housing development that contains five or more residential units, exclusive of any other ~~density~~ floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(B) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(C) The site of the development is zoned to allow residential use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for nonresidential use.

(D) The applicant and the development satisfy the ~~affordability~~ **replacement requirements** criteria specified in subdivisions ~~(b) and (c)~~ of Section 65915.

~~(E) In addition to those criteria specified in subparagraph (D), the development includes both of the following:~~

~~(i) At least 11 percent of the units with an affordable housing cost or affordable rent to persons and families with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code.~~

~~(ii) At~~

(E) The development includes at least 20 percent of the units ~~units~~ units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 80 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code. Code, and subject to an affordability restriction for a minimum of 55 years.

(F) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use density **floor area ratio** bonus or other incentives **or concessions** provided pursuant to **this chapter** ~~Section 65915~~ to relieve the development from a maximum height limitation.

(2) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(3) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county.

(4) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(5) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(b) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, **upon the request of the developer,** a floor area ratio bonus, in lieu of a density bonus on the basis of dwelling units per acre. ~~whichever provides greater public benefit in relation to affordable housing.~~

(c) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(d) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(e) An applicant for a floor area ratio bonus pursuant to this section may also submit to a city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

Related legislation:

AB 1934 (Santiago), Chapter 747, Statutes of 2016: Created a development bonus when a commercial developer enters into an agreement for partnered housing to contribute affordable housing through a joint project or two separate projects encompassing affordable housing.

AB 744 (Chau), Chapter 699, Statutes of 2015: Requires a local government, upon the request of a developer that receives a density bonus, to reduce the minimum parking requirements for a housing development, if it meets specified criteria.

AB 2222 (Nazarian), Chapter 682, Statutes of 2014: Prohibited an applicant from receiving a density bonus, incentive, or concession if a proposed housing development or condominium project is located on property where dwelling units have, at any time in the five-year period preceding the application, been occupied by very low- or lower-income households or subject to rent control. An applicant may overcome this prohibition by at least replacing all of the existing affordable units, as specified.

Double-Referred: If AB 2372 passes out of this committee, the bill will be referred to the Committee on Local Government

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Diego (sponsor)
 Building Industry Association's Urban Council
 California Apartment Association
 California Building Industry Association
 California Housing Consortium
 Climate Action Campaign
 San Diego Housing Federation
 San Diego County Apartment Association
 San Diego Regional Chamber of Commerce's Infrastructure, Housing and Land Use Committee

Opposition

None on file

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