

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2753 (Friedman) – As Amended April 19, 2018

SUBJECT: Density bonuses: density bonus application

SUMMARY: Makes changes to the density bonus application process. Specifically, **this bill:**

- 1) Requires a city, county, or city and county to provide a developer, at the time an application for a density bonus is deemed complete, a determination as to the following:
 - a) The amount of density bonus for which a development is eligible;
 - b) If the applicant requests a parking ratio, the ratio for which the applicant is eligible; and
 - c) If the applicant requests incentives, concessions, or waivers or reductions in development standards, whether the applicant provided adequate information for the city, county, or city and county to make a determination as to those incentives, concessions, or waivers or reductions.
- 2) Provides that the determination made in 1) is based on the development project at the time the application is deemed complete and the city, county, or city and county shall adjust the amount of density bonus and parking ratios awarded based on any changes during the course of the development.

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 cities and counties 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 city, county, or city and county, that local government shall comply with state density bonus law.
- 4) Requires cities and counties 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 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 (Government Code Section 65915)
- 5) Provides that the density bonus for low-, very low-, and moderate-income units increase incrementally according to a set formula.
- 6) Requires cities and counties 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 (Government Code Section 65915)
- 7) Requires the local government to grant the concession or incentive requested by the applicant unless the jurisdiction/local government makes a written finding, based upon substantial evidence, of any of the following:
- a) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, as specified, or for rents for the targeted units to be set as specified;
 - b) The concession or incentive would have a specific, adverse impact, as specified, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or
 - c) The concession or incentive would be contrary to state or federal law.
- 8) Provides that, upon the developer's request, the local government must provide reduced parking standards, as specified.
- 9) Requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following:
- 1) Adopt procedures and timelines for processing a density bonus application;

- 2) Provide a list of all documents and information required to be submitted with the density bonus application in order for the application to be deemed complete, consistent with density bonus law; and,
 - 3) Notify the applicant whether the application is complete in a manner that is consistent with the Permit Streamlining Act.
- 10) Prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law.
 - 11) Allows a local government to require reasonable documentation to establish eligibility for a density bonus, incentives and concessions, waivers of development standards, and parking ratios.
 - 12) Authorizes an applicant to initiate judicial proceedings if the local government refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant the request is in violation of density bonus law, the court will award the plaintiff reasonable attorney's fees and costs.
 - 13) Provides that if a development is 100% affordable to lower income families, then, upon the request of a developer, the local government shall reduce the minimum parking requirements for a development requesting a density bonus, 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.
 - 14) 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 local government shall not impose a parking ratio that exceeds 0.5 spaces per bedroom.
 - 15) Defines "unobstructed access" as a resident being able to access the transit stop without encountering natural or constructed impediments.
 - 16) 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.

- 17) 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. The study must be based on substantial evidence and include, but not be limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized development, and the lower rates of car ownership for very low- and low-income individuals, including seniors and special needs individuals. Any new study shall be paid for by the local government.
- 18) 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.

FISCAL EFFECT: Unknown.

COMMENTS:

Background: Density bonus law was originally enacted in 1979 to help address the affordable housing shortage at the time and to encourage development of more low- and moderate-income housing units. Nearly forty years later, the Legislature faces the same 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% affordable developments as well. Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning, in exchange for affordable units. In return for inclusion of affordable units in a development, a developer is given an increase in density over a city's zoned density, as well as concessions, incentives, and waivers or reductions in development standards. 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, incentives, and waivers or reductions in development standards 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 are required to provide for the expeditious processing of a density bonus application and are required to adopt procedures and timelines for processing those applications. Local governments are also required to provide a list of all documents and information that a developer must submit for a project to be considered complete. The application must be processed based on the timeline and procedure in the Permit Streamlining Act, which requires a planning department to determine if an application is complete within 30 days. If the planning department determines that the application is incomplete, it must provide in writing why it is incomplete. When the developer resubmits the application, the 30 day timeline starts again.

As part of a density bonus application, a developer can request a reduction in the parking ratio for the development. For 100% affordable developments, a local government is required to

reduce the parking requirement to 0.5 spaces per unit for developments with one-half mile of transit; for special-needs housing, the requirement is 0.3 units of parking per unit. At the time the application is submitted, the local government can determine the parking reduction that the developer can receive.

Despite various amendments to density bonus law over the years to further clarify that a developer that includes affordable units is required to receive an increase in density, concessions, incentives, waivers, and reductions in development standards if they are requested, some cities either misinterpret the statute or do not comply with its provisions. Some developers report significant delays in the application review and approval process, which slows or can stop the development of much needed housing.

This bill would provide greater certainty to a developer submitting a density bonus application by requiring a local government to notify a developer at the time the application for a density bonus is deemed complete, the level of density bonus and the amount of parking ratio that the development is eligible to receive. If the developer requests concessions, incentives, or waivers or reductions of the development standards, the local government would be required to notify the developer if it has enough information to make a determination on those concessions, incentives, or waivers or reductions of the development standards.

The bill also declares the Legislature's intent that establishing a uniform process for the review of density bonus applications, including the request for incentives, concession, waivers and reductions of development standards, is a matter of statewide concern and applies to all cities, including charter cities.

Related legislation:

AB 2501 (Bloom), Chapter 758, Statutes of 2016: Made several changes to density bonus law, including requiring local governments to, within 30 days of receiving the application, notifying an applicant in writing if the application is complete.

Double-Referred: If AB 2753 passes out of this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association
Associated Builders and Contractors of Northern California
Association of Regional Center Agencies
Bay Area Council
California Apartment Association
California Association of Realtors
California Building Industry Association
Cusumano Real Estate Group
LeadingAge California

Opposition

None on file

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