

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1934 (Santiago) – As Amended April 4, 2016

**SUBJECT:** Planning and zoning: density bonuses: mixed-use projects

**SUMMARY:** Creates a density bonus for commercial developers that partner with an affordable housing developer to construct a mixed-used development. Specifically, **this bill:**

- 1) Provides that when a commercial developer agrees to partner with an affordable housing developer to construct a mixed-used project with housing located on site or located within a one-mile radius of the proposed development, a local government must in addition to granting incentives and concessions under State Density Bonus Law also grant the commercial developer a density increase of up to 20% variance of the local governments zoning ordinance or regulation, including but not limited to, floor area ratios or reduction of commercial linkage fees.
- 2) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay the program or level of service.
- 3) Makes findings and declarations that the development of affordable housing is a matter of statewide concern and it is not a municipal affair, and therefore, this bill applies to all cities including charter cities.

**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) 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) 10% of the total units for lower-income households;
  - b) 5% of the total units for very-low income households;
  - c) A senior citizen housing development or mobilehome park; and,
  - d) 10% of the units in a common-interest development (CID) for moderate-income households.

- 4) Requires that the applicant agree to continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 5) Specifies that concessions or incentives may include the following:
  - a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards.
  - b) 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.
  - c) Other regulatory incentives or concessions proposed by the developer or the local government that result in identifiable, financially sufficient, and actual cost reductions.
- 6) Requires local governments to provide applicants with the following number of incentives or concessions:
  - a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for persons and families of moderate-income in a common interest development.
  - b) Two incentives or concessions for projects that include at least 20% of the total units for lower-income households, at least 10% for very low-income households, or at least 20% for persons and families of moderate-income in a common interest development.
  - c) Three incentives or concessions for projects that include at least 30% of the total units for lower-income households, at least 15% for very low-income households, or at least 30% for persons and families of moderate-income in a common interest development.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

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 area median income. 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 that result in identifiable, financially sufficient, and actual cost reductions.

This bill seeks to encourage greater production of affordable units by creating a "density bonus" for commercial developers who partner with an affordable housing developer to construct affordable units. Affordable housing developers would receive a density bonus commensurate with the number of affordable units included in the development plus concessions and incentives. The affordable units could be built on the same site as the commercial development or within one mile. In addition to the density bonus and concessions and incentives provided for the affordable units, the commercial developer would receive a "density bonus" equal to an increase of up to 20% of the variance in the floor area ratios and commercial linkage fees.

Purpose of this bill: According to the author, "Local governments can be wary of high density residential development because of the corresponding increase in demand for public services and infrastructure. Conversely, in an era of tight budgets, local governments have more incentive to approve commercial developments which will increase revenues (i.e. hotels with transient occupancy tax or retail establishments which generate sales tax). AB 1934 represents a solution to all three of these dilemmas: a piece of California's affordable housing crisis solution which brings both residential and commercial developers to the table. AB 1934 creates a new combined bonus that shall be provided by local governments to affordable housing developers and commercial developers who partner together to construct a mixed-use project in which affordable housing will either be on-site or located within a 1-mile radius of the sister development. The variances can include, but are not limited to, floor area ratios and commercial linkage fees. AB 1934 seeks to marry two needs: a) the state's need for affordable housing; and b) local government's desire for increased revenues, by encouraging non-traditional housing developers to enter the market and think outside the box in their developments."

Arguments in support: The California Apartment Association states in support, "California is struggling to meet the needs of its citizens when it comes to housing production, especially housing that is affordable near job centers and public transportation. We appreciate your proposed solution that meets the needs of local governments for economic development along with the construction of affordable housing for individuals and families who work in our communities.

Arguments in opposition: According to the League of California Cities, they have a number of concerns with the bill: "First density bonus law applies to housing developments of five or more units. It's based upon the premise that density bonus increases (and other concessions and incentives) allow a developer to recover the cost of constructing housing units that are affordable to certain income categories. The tradeoff is: Developer gives city affordable units; city gives developer density bonus and other concessions and incentives that reduce developer's costs. This bill says that a commercial developer which might have no connection to the housing developer gets a 20% variance from regulatory requirements (including floor area ratios) and fees. The bill simply requires the commercial developer to partner with the housing developer. There is no definition of "partners." There is also no definition of "commercial development". There is no fair trade off in this bill. The developer of the commercial development is giving the city

nothing; yet the city gives the commercial developer a 20% variance in the regulatory requirements and fees.

Staff comments:

It's unclear to staff what are the appropriate types of concessions and incentives that a commercial developer should receive in return for partnering with an affordable housing developer. The bill would give a commercial developer a 20% variance of the local governments zoning ordinance or regulation, including but not limited to, floor area ratios or commercial linkage fees. In addition, commercial linkage fees are often used to fund production of a affordable housing. Modifying those fees could reduce funding overall for affordable housing. The committee may wish to consider modifying the language to more closely align with the state density bonus law by amending the language as follows:

This bill would also allow the affordable housing to be built within one-mile of the commercial development. The committee may wish to consider if that policy supports the goals of the bill to encourage mixed use development that combines commercial space and affordable housing development or if it should be deleted.

Committee amendments:

(a) When an applicant for approval for commercial development agrees to partner with an affordable housing developer to construct a mixed-used project for which the housing will be ~~either located onsite at the proposed commercial development or located within a one-mile radius of the proposed commercial development~~, the city, county, or city and county shall, in addition to any density bonus and incentives or concessions granted to the affordable housing developer as prescribed in Section 65915 grant to the commercial developer a density bonus as prescribed in subdivision (b).

(b) The density bonus granted to the commercial developer shall mean exceptions resulting in significant cost reductions over the maximum allowable intensity in the general plan, zoning ordinance or other regulation, ~~a density increase of up to 20 percent variance of the city, county, or city and county's zoning ordinance or regulation~~, including, but not limited to, floor area ratios and may include modification to development standards such as heights and parking requirements. ~~or commercial linkage fees.~~

Double referred: If AB 1934 passes this committee, the bill will be referred to the Committee on Local Government.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Apartment Association

**Opposition**

American Planning Association California Chapter  
League of California Cities

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