

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2501

**Introduced by Assembly Members Bloom and Low
(Coauthor: Assembly Member Daly)**

February 19, 2016

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2501, as amended, Bloom. Housing: density bonuses.

Existing law, the Planning and Zoning Law, requires, when an applicant proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low-, low-, or moderate-income households or qualifying residents. Existing law requires continued affordability for 55 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus. *Existing law requires a city, county, or city and county to adopt an ordinance to implement these requirements and to establish procedures to carry them out.*

~~This bill would require the local government to make a written determination on whether the applicant's application is complete within 30 calendar days of receipt, and to make the determination on an application for a density bonus within 60 calendar days of receipt of a completed application. The bill would further provide an applicant with~~

~~appeal rights under specified circumstances. ordinance to include procedures and timelines for processing a density bonus application, as specified, as well as a list of documents and information required to be submitted with the application in order for it to be deemed complete.~~ By increasing the duties of local officials, this bill would impose a state-mandated local program. The bill would prohibit a local government from requiring ~~an additional fee or~~ additional reports or studies to be prepared by the developer as a condition of the application. The bill would additionally require each component of any density calculation that results in fractional units to be rounded up to the next whole number, and would provide that this provision is declaratory of existing law.

Existing law defines the term “density bonus” for these purposes to mean a density increase over the otherwise maximum allowable residential density as of the date of the application and provides that the applicant may elect to accept a lesser percentage of density bonus.

This bill would specify that the term “density bonus” means a density increase over the maximum allowable gross residential density at the time of the date of the application, and would provide that an applicant may elect to accept no density bonus. The bill would additionally provide that the term “density bonus” includes any incentive or concession, or waiver or reduction of development standard, provided to the applicant for the production of housing units and child care facilities, as provided.

Existing law requires a local government to provide the applicant for a density bonus with incentives or concessions for the production of housing units and child care facilities, as specified.

The bill would additionally require the local government to provide the applicant with a waiver or reduction of development standards, as specified.

Existing law requires a local government to grant a proposal for specific incentives or concessions requested by an applicant unless the local government makes written ~~findings, findings,~~ based on substantial evidence, that, among ~~others, other things,~~ the concession or incentive is not required in order to provide affordable housing costs or for rents for the targeted units, as specified.

This bill would, instead, provide that the local government is required to provide the requested concessions or incentives unless it finds, based on substantial evidence, that the concession or incentive does not reduce

the cost of development to provide for affordable housing costs or rents for the targeted units.

Existing law defines the term “housing development” for these purposes to mean a development project for five or more residential units.

This bill would expand that definition to include mixed-use housing, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:

3 65915. (a) (1) When an applicant seeks a density bonus for
4 a housing development within, or for the donation of land for
5 housing within, the jurisdiction of a city, county, or city and county,
6 that local government shall provide the applicant with incentives,
7 concessions, or waiver and reduction of development standards
8 for the production of housing units and child care facilities as
9 prescribed in this section. ~~All cities, counties, or cities and counties~~
10 ~~A city, county, or city and county~~ shall adopt an ordinance that
11 specifies how compliance with this section will be implemented.
12 ~~The ordinance shall specify all the information and documents,~~
13 ~~consistent with this chapter, that shall be submitted with the~~
14 ~~application for a density bonus.~~ Failure to adopt an ordinance shall
15 not relieve a city, county, or city and county from complying with
16 this section. The local government shall not require public notice
17 or hold a public hearing on the application. Acting on the
18 application shall be considered a ministerial act.

19 (2) A local government shall not condition the ~~submission~~
20 ~~submission, review, or approval~~ of an application for a density
21 bonus pursuant to this chapter on the ~~payment of an additional fee~~
22 ~~or~~ preparation of ~~any~~ an additional report or study that is not

1 otherwise required by any other applicable law. *described in this*
 2 *section.*

3 ~~(3) (A) The local government shall, within 30 calendar days~~
 4 ~~following receipt of the application, make a written determination~~
 5 ~~of whether the application for a density bonus is complete and~~
 6 ~~shall transmit that determination to the applicant. If the written~~
 7 ~~determination is not made within 30 calendar days of receipt of~~
 8 ~~the application, the application shall be deemed complete for~~
 9 ~~purposes of this section. If the application is determined to be~~
 10 ~~incomplete, the determination shall include a list and thorough~~
 11 ~~description of the specific information needed to complete the~~
 12 ~~application. An applicant may appeal the decision in writing to~~
 13 ~~the administrator of the department. The local government shall~~
 14 ~~make a decision on the appeal within 15 calendar days of receipt~~
 15 ~~of the appeal. An applicant shall have the right to appeal the~~
 16 ~~decision on the first appeal to the governing body of the local~~
 17 ~~government. A decision shall be made by the governing body~~
 18 ~~within 15 calendar days.~~

19 ~~(B) If the application was determined incomplete pursuant to~~
 20 ~~subparagraph (A), the applicant may resubmit the application in~~
 21 ~~complete form. The local government shall make a written~~
 22 ~~determination, within 10 business days of receipt of the resubmittal,~~
 23 ~~of whether the application is complete after resubmittal. If a written~~
 24 ~~determination is not made within 10 business days, the application~~
 25 ~~shall be deemed complete for purposes of this section. This~~
 26 ~~subparagraph shall apply to all subsequent resubmittals after a~~
 27 ~~written determination that the application is incomplete. An~~
 28 ~~applicant may appeal the decision in writing to the administrator~~
 29 ~~of the planning department. The local government shall make a~~
 30 ~~decision on the appeal within 15 calendar days of receipt of the~~
 31 ~~appeal. An applicant shall have the right to appeal the decision on~~
 32 ~~the first appeal to the governing body of the local government. A~~
 33 ~~decision shall be made by the governing body within 15 calendar~~
 34 ~~days.~~

35 ~~(C) The local government shall, within 60 days of determining~~
 36 ~~an application is complete, act to approve or disapprove the density~~
 37 ~~bonus, or inform the applicant in writing as to the reason for~~
 38 ~~refusing to grant the request. A decision made pursuant to this~~
 39 ~~subparagraph shall constitute a final decision on the application.~~
 40 ~~If a local government fails to act to approve or disapprove the~~

1 application within 60 days, the application shall be deemed
2 approved.

3 (3) *In order to provide for the expeditious processing of a*
4 *density bonus application, the ordinance required pursuant to this*
5 *subdivision shall include all of the following:*

6 (A) *Procedures and timelines for processing a density bonus*
7 *application.*

8 (B) *A list of all documents and information required to be*
9 *submitted with the density bonus application in order for the*
10 *density bonus application to be deemed complete. This list shall*
11 *be consistent with this chapter.*

12 (C) *A procedure to notify the applicant within 30 days of receipt*
13 *of the application that the application is complete or that an*
14 *additional item is required to complete the application. If an*
15 *additional item is required, it shall be identified in this notice. If*
16 *the local government does not provide this notice within 30 days,*
17 *then the application shall be deemed complete.*

18 (D) *A procedure to make a final determination on the density*
19 *bonus application no later than 60 days from the date when the*
20 *density bonus application is deemed complete. If the local*
21 *government does not make a final determination within this time,*
22 *the density bonus application shall be deemed approved.*

23 (b) (1) A city, county, or city and county shall grant one density
24 bonus, the amount of which shall be as specified in subdivision
25 (f), and incentives or concessions, as described in subdivision (d),
26 when an applicant for a housing development seeks and agrees to
27 construct a housing development, excluding any units permitted
28 by the density bonus awarded pursuant to this section, that will
29 contain at least any one of the following:

30 (A) Ten percent of the total units of a housing development for
31 lower income households, as defined in Section 50079.5 of the
32 Health and Safety Code.

33 (B) Five percent of the total units of a housing development for
34 very low income households, as defined in Section 50105 of the
35 Health and Safety Code.

36 (C) A senior citizen housing development, as defined in Sections
37 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
38 residency based on age requirements for housing for older persons
39 pursuant to Section 798.76 or 799.5 of the Civil Code.

1 (D) Ten percent of the total dwelling units in a common interest
2 development, as defined in Section 4100 of the Civil Code, for
3 persons and families of moderate income, as defined in Section
4 50093 of the Health and Safety Code, provided that all units in the
5 development are offered to the public for purchase.

6 (2) For purposes of calculating the amount of the density bonus
7 pursuant to subdivision (f), an applicant who requests a density
8 bonus pursuant to this subdivision shall elect whether the bonus
9 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)
10 of paragraph (1).

11 (3) For the purposes of this section, “total units” or “total
12 dwelling units” does not include units added by a density bonus
13 awarded pursuant to this section or any local law granting a greater
14 density bonus.

15 (c) (1) An applicant shall agree to, and the city, county, or city
16 and county shall ensure, the continued affordability of all very low
17 and low-income rental units that qualified the applicant for the
18 award of the density bonus for 55 years or a longer period of time
19 if required by the construction or mortgage financing assistance
20 program, mortgage insurance program, or rental subsidy program.
21 Rents for the lower income density bonus units shall be set at an
22 affordable rent as defined in Section 50053 of the Health and Safety
23 Code.

24 (2) An applicant shall agree to, and the city, county, or city and
25 county shall ensure that, the initial occupant of all for-sale units
26 that qualified the applicant for the award of the density bonus are
27 persons and families of very low, low, or moderate income, as
28 required, and that the units are offered at an affordable housing
29 cost, as that cost is defined in Section 50052.5 of the Health and
30 Safety Code. The local government shall enforce an equity sharing
31 agreement, unless it is in conflict with the requirements of another
32 public funding source or law. The following apply to the equity
33 sharing agreement:

34 (A) Upon resale, the seller of the unit shall retain the value of
35 any improvements, the downpayment, and the seller’s proportionate
36 share of appreciation. The local government shall recapture any
37 initial subsidy, as defined in subparagraph (B), and its proportionate
38 share of appreciation, as defined in subparagraph (C), which
39 amount shall be used within five years for any of the purposes

1 described in subdivision (e) of Section 33334.2 of the Health and
2 Safety Code that promote home ownership.

3 (B) For purposes of this subdivision, the local government's
4 initial subsidy shall be equal to the fair market value of the home
5 at the time of initial sale minus the initial sale price to the
6 moderate-income household, plus the amount of any downpayment
7 assistance or mortgage assistance. If upon resale the market value
8 is lower than the initial market value, then the value at the time of
9 the resale shall be used as the initial market value.

10 (C) For purposes of this subdivision, the local government's
11 proportionate share of appreciation shall be equal to the ratio of
12 the local government's initial subsidy to the fair market value of
13 the home at the time of initial sale.

14 (3) (A) An applicant shall be ineligible for a density bonus or
15 any other incentives or concessions under this section if the housing
16 development is proposed on any property that includes a parcel or
17 parcels on which rental dwelling units are or, if the dwelling units
18 have been vacated or demolished in the five-year period preceding
19 the application, have been subject to a recorded covenant,
20 ordinance, or law that restricts rents to levels affordable to persons
21 and families of lower or very low income; subject to any other
22 form of rent or price control through a public entity's valid exercise
23 of its police power; or occupied by lower or very low income
24 households, unless the proposed housing development replaces
25 those units, and either of the following applies:

26 (i) The proposed housing development, inclusive of the units
27 replaced pursuant to this paragraph, contains affordable units at
28 the percentages set forth in subdivision (b).

29 (ii) Each unit in the development, exclusive of a manager's unit
30 or units, is affordable to, and occupied by, either a lower or very
31 low income household.

32 (B) For the purposes of this paragraph, "replace" shall mean
33 either of the following:

34 (i) If any dwelling units described in subparagraph (A) are
35 occupied on the date of application, the proposed housing
36 development shall provide at least the same number of units of
37 equivalent size or type, or both, to be made available at affordable
38 rent or affordable housing cost to, and occupied by, persons and
39 families in the same or lower income category as those households
40 in occupancy. For unoccupied dwelling units described in

1 subparagraph (A) in a development with occupied units, the
2 proposed housing development shall provide units of equivalent
3 size or type, or both, to be made available at affordable rent or
4 affordable housing cost to, and occupied by, persons and families
5 in the same or lower income category in the same proportion of
6 affordability as the occupied units. All replacement calculations
7 resulting in fractional units shall be rounded up to the next whole
8 number. If the replacement units will be rental dwelling units,
9 these units shall be subject to a recorded affordability restriction
10 for at least 55 years. If the proposed development is for-sale units,
11 the units replaced shall be subject to paragraph (2).

12 (ii) If all dwelling units described in subparagraph (A) have
13 been vacated or demolished within the five-year period preceding
14 the application, the proposed housing development shall provide
15 at least the same number of units of equivalent size or type, or
16 both, as existed at the highpoint of those units in the five-year
17 period preceding the application to be made available at affordable
18 rent or affordable housing cost to, and occupied by, persons and
19 families in the same or lower income category as those persons
20 and families in occupancy at that time, if known. If the incomes
21 of the persons and families in occupancy at the highpoint is not
22 known, then one-half of the required units shall be made available
23 at affordable rent or affordable housing cost to, and occupied by,
24 very low income persons and families and one-half of the required
25 units shall be made available for rent at affordable housing costs
26 to, and occupied by, low-income persons and families. All
27 replacement calculations resulting in fractional units shall be
28 rounded up to the next whole number. If the replacement units will
29 be rental dwelling units, these units shall be subject to a recorded
30 affordability restriction for at least 55 years. If the proposed
31 development is for-sale units, the units replaced shall be subject
32 to paragraph (2).

33 (C) Paragraph (3) of subdivision (c) does not apply to an
34 applicant seeking a density bonus for a proposed housing
35 development if his or her application was submitted to, or
36 processed by, a city, county, or city and county before January 1,
37 2015.

38 (d) (1) An applicant for a density bonus pursuant to subdivision
39 (b) may submit to a city, county, or city and county a proposal for
40 the specific incentives or concessions that the applicant requests

1 pursuant to this section, and may request a meeting with the city,
2 county, or city and county. The city, county, or city and county
3 shall grant the concession or incentive requested by the applicant
4 unless the city, county, or city and county makes a written finding,
5 based upon substantial evidence, of any of the following:

6 (A) The concession or incentive does not reduce the cost of
7 development to provide for affordable housing costs, as defined
8 in Section 50052.5 of the Health and Safety Code, or for rents for
9 the targeted units to be set as specified in subdivision (c).

10 (B) The concession or incentive would have a specific adverse
11 impact, as defined in paragraph (2) of subdivision (d) of Section
12 65589.5, upon public health and safety or the physical environment
13 or on any real property that is listed in the California Register of
14 Historical Resources and for which there is no feasible method to
15 satisfactorily mitigate or avoid the specific adverse impact without
16 rendering the development unaffordable to low- and
17 moderate-income households.

18 (C) The concession or incentive would be contrary to state or
19 federal law.

20 (2) The applicant shall receive the following number of
21 incentives or concessions:

22 (A) One incentive or concession for projects that include at least
23 10 percent of the total units for lower income households, at least
24 5 percent for very low income households, or at least 10 percent
25 for persons and families of moderate income in a common interest
26 development.

27 (B) Two incentives or concessions for projects that include at
28 least 20 percent of the total units for lower income households, at
29 least 10 percent for very low income households, or at least 20
30 percent for persons and families of moderate income in a common
31 interest development.

32 (C) Three incentives or concessions for projects that include at
33 least 30 percent of the total units for lower income households, at
34 least 15 percent for very low income households, or at least 30
35 percent for persons and families of moderate income in a common
36 interest development.

37 (3) The applicant may initiate judicial proceedings if the city,
38 county, or city and county refuses to grant a requested density
39 bonus, incentive, or concession. If a court finds that the refusal to
40 grant a requested density bonus, incentive, or concession is in

1 violation of this section, the court shall award the plaintiff
2 reasonable attorney's fees and costs of suit. Nothing in this
3 subdivision shall be interpreted to require a local government to
4 grant an incentive or concession that has a specific, adverse impact,
5 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
6 upon health, safety, or the physical environment, and for which
7 there is no feasible method to satisfactorily mitigate or avoid the
8 specific adverse impact. Nothing in this subdivision shall be
9 interpreted to require a local government to grant an incentive or
10 concession that would have an adverse impact on any real property
11 that is listed in the California Register of Historical Resources.
12 The city, county, or city and county shall establish procedures for
13 carrying out this section, that shall include legislative body
14 approval of the means of compliance with this section.

15 (4) The city, county, or city and county shall bear the burden
16 of proof for the denial of a requested concession or incentive.
17 Denial of a requested concession or incentive shall be deemed to
18 have exhausted an applicant's administrative ~~remedies~~. *remedies*
19 *for purposes of paragraph (3) of subdivision (d) or subdivision*
20 *(e)*.

21 (e) (1) In no case may a city, county, or city and county apply
22 any development standard that will have the effect of physically
23 precluding the construction of a development meeting the criteria
24 of subdivision (b) at the densities or with the concessions or
25 incentives permitted by this section. An applicant may submit to
26 a city, county, or city and county a proposal for the waiver or
27 reduction of development standards that will have the effect of
28 physically precluding the construction of a development meeting
29 the criteria of subdivision (b) at the densities or with the
30 concessions or incentives permitted under this section, and may
31 request a meeting with the city, county, or city and county. If a
32 court finds that the refusal to grant a waiver or reduction of
33 development standards is in violation of this section, the court
34 shall award the plaintiff reasonable attorney's fees and costs of
35 suit. Nothing in this subdivision shall be interpreted to require a
36 local government to waive or reduce development standards if the
37 waiver or reduction would have a specific, adverse impact, as
38 defined in paragraph (2) of subdivision (d) of Section 65589.5,
39 upon health, safety, or the physical environment, and for which
40 there is no feasible method to satisfactorily mitigate or avoid the

1 specific adverse impact. Nothing in this subdivision shall be
 2 interpreted to require a local government to waive or reduce
 3 development standards that would have an adverse impact on any
 4 real property that is listed in the California Register of Historical
 5 Resources, or to grant any waiver or reduction that would be
 6 contrary to state or federal law.

7 (2) A proposal for the waiver or reduction of development
 8 standards pursuant to this subdivision shall neither reduce nor
 9 increase the number of incentives or concessions to which the
 10 applicant is entitled pursuant to subdivision (d).

11 (f) (1) For the purposes of this chapter, “density bonus” means
 12 a density increase over the otherwise maximum allowable gross
 13 residential density as of the date of application by the applicant to
 14 the city, county, or city and county. The applicant may elect to
 15 accept a lesser percentage of density bonus, including, but not
 16 limited to, no increase in density. The amount of density bonus to
 17 which the applicant is entitled shall vary according to the amount
 18 by which the percentage of affordable housing units exceeds the
 19 percentage established in subdivision (b).

20 (A) For housing developments meeting the criteria of
 21 subparagraph (A) of paragraph (1) of subdivision (b), the density
 22 bonus shall be calculated as follows:

23	Percentage Low-Income Units	Percentage Density Bonus
24	10	20
25	11	21.5
26	12	23
27	13	24.5
28	14	26
29	15	27.5
30	17	30.5
31	18	32
32	19	33.5
33	20	35
34		
35		
36		

37 (B) For housing developments meeting the criteria of
 38 subparagraph (B) of paragraph (1) of subdivision (b), the density
 39 bonus shall be calculated as follows:

	Percentage Very Low Income Units	Percentage Density Bonus
1		
2	5	20
3	6	22.5
4	7	25
5	8	27.5
6	9	30
7	10	32.5
8	11	35
9		

10 (C) For housing developments meeting the criteria of
 11 subparagraph (C) of paragraph (1) of subdivision (b), the density
 12 bonus shall be 20 percent of the number of senior housing units.

13 (D) For housing developments meeting the criteria of
 14 subparagraph (D) of paragraph (1) of subdivision (b), the density
 15 bonus shall be calculated as follows:

	Percentage Moderate-Income Units	Percentage Density Bonus
16		
17		
18	10	5
19	11	6
20	12	7
21	13	8
22	14	9
23	15	10
24	16	11
25	17	12
26	18	13
27	19	14
28	20	15
29	21	16
30	22	17
31	23	18
32	24	19
33	25	20
34	26	21
35	27	22
36	28	23
37	29	24
38	30	25
39	31	26
40	32	27

1	33	28
2	34	29
3	35	30
4	36	31
5	37	32
6	38	33
7	39	34
8	40	35
9		

10 (E) All density calculations resulting in fractional units shall be
 11 rounded up to the next whole number. The granting of a density
 12 bonus shall not require, or be interpreted, in and of itself, to require
 13 a general plan amendment, local coastal plan amendment, zoning
 14 change, or other discretionary approval.

15 (2) The term “density bonus” shall also include any incentive
 16 or concession, or waiver or reduction of development standard,
 17 provided to the applicant for the production of housing units and
 18 child care facilities, as provided in this section.

19 (g) (1) When an applicant for a tentative subdivision map,
 20 parcel map, or other residential development approval donates
 21 land to a city, county, or city and county in accordance with this
 22 subdivision, the applicant shall be entitled to a 15-percent increase
 23 above the otherwise maximum allowable residential density for
 24 the entire development, as follows:

25	Percentage Very Low Income	Percentage Density Bonus
26		
27	10	15
28	11	16
29	12	17
30	13	18
31	14	19
32	15	20
33	16	21
34	17	22
35	18	23
36	19	24
37	20	25
38	21	26
39	22	27
40	23	28

1	24	29
2	25	30
3	26	31
4	27	32
5	28	33
6	29	34
7	30	35
8		

9 (2) This increase shall be in addition to any increase in density
10 mandated by subdivision (b), up to a maximum combined mandated
11 density increase of 35 percent if an applicant seeks an increase
12 pursuant to both this subdivision and subdivision (b). All density
13 calculations resulting in fractional units shall be rounded up to the
14 next whole number. Nothing in this subdivision shall be construed
15 to enlarge or diminish the authority of a city, county, or city and
16 county to require a developer to donate land as a condition of
17 development. An applicant shall be eligible for the increased
18 density bonus described in this subdivision if all of the following
19 conditions are met:

20 (A) The applicant donates and transfers the land no later than
21 the date of approval of the final subdivision map, parcel map, or
22 residential development application.

23 (B) The developable acreage and zoning classification of the
24 land being transferred are sufficient to permit construction of units
25 affordable to very low income households in an amount not less
26 than 10 percent of the number of residential units of the proposed
27 development.

28 (C) The transferred land is at least one acre in size or of
29 sufficient size to permit development of at least 40 units, has the
30 appropriate general plan designation, is appropriately zoned with
31 appropriate development standards for development at the density
32 described in paragraph (3) of subdivision (c) of Section 65583.2,
33 and is or will be served by adequate public facilities and
34 infrastructure.

35 (D) The transferred land shall have all of the permits and
36 approvals, other than building permits, necessary for the
37 development of the very low income housing units on the
38 transferred land, not later than the date of approval of the final
39 subdivision map, parcel map, or residential development
40 application, except that the local government may subject the

1 proposed development to subsequent design review to the extent
2 authorized by subdivision (i) of Section 65583.2 if the design is
3 not reviewed by the local government prior to the time of transfer.

4 (E) The transferred land and the affordable units shall be subject
5 to a deed restriction ensuring continued affordability of the units
6 consistent with paragraphs (1) and (2) of subdivision (c), which
7 shall be recorded on the property at the time of the transfer.

8 (F) The land is transferred to the local agency or to a housing
9 developer approved by the local agency. The local agency may
10 require the applicant to identify and transfer the land to the
11 developer.

12 (G) The transferred land shall be within the boundary of the
13 proposed development or, if the local agency agrees, within
14 one-quarter mile of the boundary of the proposed development.

15 (H) A proposed source of funding for the very low income units
16 shall be identified not later than the date of approval of the final
17 subdivision map, parcel map, or residential development
18 application.

19 (h) (1) When an applicant proposes to construct a housing
20 development that conforms to the requirements of subdivision (b)
21 and includes a child care facility that will be located on the
22 premises of, as part of, or adjacent to, the project, the city, county,
23 or city and county shall grant either of the following:

24 (A) An additional density bonus that is an amount of square
25 feet of residential space that is equal to or greater than the amount
26 of square feet in the child care facility.

27 (B) An additional concession or incentive that contributes
28 significantly to the economic feasibility of the construction of the
29 child care facility.

30 (2) The city, county, or city and county shall require, as a
31 condition of approving the housing development, that the following
32 occur:

33 (A) The child care facility shall remain in operation for a period
34 of time that is as long as or longer than the period of time during
35 which the density bonus units are required to remain affordable
36 pursuant to subdivision (c).

37 (B) Of the children who attend the child care facility, the
38 children of very low income households, lower income households,
39 or families of moderate income shall equal a percentage that is
40 equal to or greater than the percentage of dwelling units that are

1 required for very low income households, lower income
2 households, or families of moderate income pursuant to subdivision
3 (b).

4 (3) Notwithstanding any requirement of this subdivision, a city,
5 county, or city and county shall not be required to provide a density
6 bonus or concession for a child care facility if it finds, based upon
7 substantial evidence, that the community has adequate child care
8 facilities.

9 (4) “Child care facility,” as used in this section, means a child
10 day care facility other than a family day care home, including, but
11 not limited to, infant centers, preschools, extended day care
12 facilities, and schoolage child care centers.

13 (i) “Housing development,” as used in this section, means a
14 development project for five or more residential units, including
15 mixed-use developments as defined in Section 65950. For the
16 purposes of this section, “housing development” also includes a
17 subdivision or common interest development, as defined in Section
18 4100 of the Civil Code, approved by a city, county, or city and
19 county and consists of residential units or unimproved residential
20 lots and either a project to substantially rehabilitate and convert
21 an existing commercial building to residential use or the substantial
22 rehabilitation of an existing multifamily dwelling, as defined in
23 subdivision (d) of Section 65863.4, where the result of the
24 rehabilitation would be a net increase in available residential units.
25 For the purpose of calculating a density bonus, the residential units
26 shall be on contiguous sites that are the subject of one development
27 application, but do not have to be based upon individual
28 subdivision maps or parcels. The density bonus shall be permitted
29 in geographic areas of the housing development other than the
30 areas where the units for the lower income households are located.

31 (j) (1) The granting of a concession or incentive shall not require
32 or be interpreted, in and of itself, to require a general plan
33 amendment, local coastal plan amendment, zoning change, special
34 studies, or other discretionary approval. This provision is
35 declaratory of existing law.

36 (2) Except as provided in subdivisions (d) and (e), the granting
37 of a density bonus shall not require or be interpreted to require the
38 waiver of a local ordinance or provisions of a local ordinance
39 unrelated to development standards.

1 (k) For the purposes of this chapter, concession or incentive
2 means any of the following:

3 (1) A reduction in site development standards or a modification
4 of zoning code requirements or architectural design requirements
5 that exceed the minimum building standards approved by the
6 California Building Standards Commission as provided in Part 2.5
7 (commencing with Section 18901) of Division 13 of the Health
8 and Safety Code, including, but not limited to, a reduction in
9 setback and square footage requirements and in the ratio of
10 vehicular parking spaces that would otherwise be required that
11 results in identifiable and actual cost reductions, as determined by
12 the developer.

13 (2) Approval of mixed-use zoning in conjunction with the
14 housing project if commercial, office, industrial, or other land uses
15 will reduce the cost of the housing development and if the
16 commercial, office, industrial, or other land uses are compatible
17 with the housing project and the existing or planned development
18 in the area where the proposed housing project will be located.

19 (3) Other regulatory incentives or concessions proposed by the
20 developer or the city, county, or city and county that result in
21 identifiable and actual cost reductions, as determined by the
22 developer. *In no case shall this include an increase in density*
23 *above the percentages specified in subdivision (f).*

24 (l) Subdivision (k) does not limit or require the provision of
25 direct financial incentives for the housing development, including
26 the provision of publicly owned land, by the city, county, or city
27 and county, or the waiver of fees or dedication requirements.

28 (m) This section does not supersede or in any way alter or lessen
29 the effect or application of the California Coastal Act of 1976
30 (Division 20 (commencing with Section 30000) of the Public
31 Resources Code).

32 (n) If permitted by local ordinance, nothing in this section shall
33 be construed to prohibit a city, county, or city and county from
34 granting a density bonus greater than what is described in this
35 section for a development that meets the requirements of this
36 section or from granting a proportionately lower density bonus
37 than what is required by this section for developments that do not
38 meet the requirements of this section.

39 (o) For purposes of this section, the following definitions shall
40 apply:

1 (1) “Development standard” includes a site or construction
2 condition, including, but not limited to, a height limitation, a
3 setback requirement, a floor area ratio, an onsite open-space
4 requirement, or a parking ratio that applies to a residential
5 development pursuant to any ordinance, general plan element,
6 specific plan, charter, or other local condition, law, policy,
7 resolution, or regulation.

8 (2) “Maximum allowable residential density” means the density
9 allowed under the zoning ordinance and land use element of the
10 general plan, or if a range of density is permitted, means the
11 maximum allowable density for the specific zoning range and land
12 use element of the general plan applicable to the project. Where
13 the density allowed under the zoning ordinance is inconsistent
14 with the density allowed under the land use element of the general
15 plan, the general plan density shall prevail.

16 (p) (1) Except as provided in paragraphs (2) and (3), upon the
17 request of the developer, a city, county, or city and county shall
18 not require a vehicular parking ratio, inclusive of handicapped and
19 guest parking, of a development meeting the criteria of subdivisions
20 (b) and (c), that exceeds the following ratios:

21 (A) Zero to one bedroom: one onsite parking space.

22 (B) Two to three bedrooms: two onsite parking spaces.

23 (C) Four and more bedrooms: two and one-half parking spaces.

24 (2) Notwithstanding paragraph (1), if a development includes
25 the maximum percentage of low- or very low income units
26 provided for in paragraphs (1) and (2) of subdivision (f) and is
27 located within one-half mile of a major transit stop, as defined in
28 subdivision (b) of Section 21155 of the Public Resources Code,
29 and there is unobstructed access to the major transit stop from the
30 development, then, upon the request of the developer, a city,
31 county, or city and county shall not impose a vehicular parking
32 ratio, inclusive of handicapped and guest parking, that exceeds 0.5
33 spaces per bedroom. For purposes of this subdivision, a
34 development shall have unobstructed access to a major transit stop
35 if a resident is able to access the major transit stop without
36 encountering natural or constructed impediments.

37 (3) Notwithstanding paragraph (1), if a development consists
38 solely of rental units, exclusive of a manager’s unit or units, with
39 an affordable housing cost to lower income families, as provided
40 in Section 50052.5 of the Health and Safety Code, then, upon the

1 request of the developer, a city, county, or city and county shall
2 not impose a vehicular parking ratio, inclusive of handicapped and
3 guest parking, that exceeds the following ratios:

4 (A) If the development is located within one-half mile of a major
5 transit stop, as defined in subdivision (b) of Section 21155 of the
6 Public Resources Code, and there is unobstructed access to the
7 major transit stop from the development, the ratio shall not exceed
8 0.5 spaces per unit.

9 (B) If the development is a for-rent housing development for
10 individuals who are 62 years of age or older that complies with
11 Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed
12 0.5 spaces per unit. The development shall have either paratransit
13 service or unobstructed access, within one-half mile, to fixed bus
14 route service that operates at least eight times per day.

15 (C) If the development is a special needs housing development,
16 as defined in Section 51312 of the Health and Safety Code, the
17 ratio shall not exceed 0.3 spaces per unit. The development shall
18 have either paratransit service or unobstructed access, within
19 one-half mile, to fixed bus route service that operates at least eight
20 times per day.

21 (4) If the total number of parking spaces required for a
22 development is other than a whole number, the number shall be
23 rounded up to the next whole number. For purposes of this
24 subdivision, a development may provide on-site parking through
25 tandem parking or uncovered parking, but not through on-street
26 parking.

27 (5) This subdivision shall apply to a development that meets
28 the requirements of subdivisions (b) and (c), but only at the request
29 of the applicant. An applicant may request parking incentives or
30 concessions beyond those provided in this subdivision pursuant
31 to subdivision (d).

32 (6) This subdivision does not preclude a city, county, or city
33 and county from reducing or eliminating a parking requirement
34 for development projects of any type in any location.

35 (7) Notwithstanding paragraphs (2) and (3), if a city, county,
36 city and county, or an independent consultant has conducted an
37 areawide or jurisdictionwide parking study in the last seven years,
38 then the city, county, or city and county may impose a higher
39 vehicular parking ratio not to exceed the ratio described in
40 paragraph (1), based upon substantial evidence found in the parking

1 study, that includes, but is not limited to, an analysis of parking
 2 availability, differing levels of transit access, walkability access
 3 to transit services, the potential for shared parking, the effect of
 4 parking requirements on the cost of market-rate and subsidized
 5 developments, and the lower rates of car ownership for low- and
 6 very low income individuals, including seniors and special needs
 7 individuals. The city, county, or city and county shall pay the costs
 8 of any new study. The city, county, or city and county shall make
 9 findings, based on a parking study completed in conformity with
 10 this paragraph, supporting the need for the higher parking ratio.

11 (q) Each component of any density calculation, including base
 12 density and bonus density, resulting in ~~fractional~~ *fractional* units
 13 shall be separately rounded up to the next whole number. The
 14 Legislature finds and declares that this provision is declaratory of
 15 existing law.

16 (r) This chapter shall be interpreted liberally in favor of
 17 producing the maximum number of total housing units.

18 SEC. 2. No reimbursement is required by this act pursuant to
 19 Section 6 of Article XIII B of the California Constitution because
 20 a local agency or school district has the authority to levy service
 21 charges, fees, or assessments sufficient to pay for the program or
 22 level of service mandated by this act, within the meaning of Section
 23 17556 of the Government Code.