

ASSEMBLY BILL

No. 2063

Introduced by Assembly Member Berman

February 14, 2022

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2063, as introduced, Berman. Density bonuses: affordable housing impact fees.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development in the city or county 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 agrees to, among other things, construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents, including lower income students. Existing law requires the amount of a density bonus and the number of incentives or concessions a qualifying developer receives to be pursuant to a certain formula based on the total number of units in the housing development, as specified. Existing law prohibits affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, from being imposed on a housing development's affordable units.

This bill would prohibit affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, from being imposed on a housing development's density bonus units. By imposing new restrictions on the ability of a local government to impose

affordable housing impact fees, the bill would impose a state-mandated local program.

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 comply with this section. A city,
7 county, or city and county shall adopt an ordinance that specifies
8 how compliance with this section will be implemented. Except as
9 otherwise provided in subdivision (s), failure to adopt an ordinance
10 shall not relieve a city, county, or city and county from complying
11 with this section.

12 (2) A local government shall not condition the submission,
13 review, or approval of an application pursuant to this chapter on
14 the preparation of an additional report or study that is not otherwise
15 required by state law, including this section. This subdivision does
16 not prohibit a local government from requiring an applicant to
17 provide reasonable documentation to establish eligibility for a
18 requested density bonus, incentives or concessions, as described
19 in subdivision (d), waivers or reductions of development standards,
20 as described in subdivision (e), and parking ratios, as described in
21 subdivision (p).

22 (3) In order to provide for the expeditious processing of a density
23 bonus application, the local government shall do all of the
24 following:

25 (A) Adopt procedures and timelines for processing a density
26 bonus application.

27 (B) Provide a list of all documents and information required to
28 be submitted with the density bonus application in order for the

1 density bonus application to be deemed complete. This list shall
2 be consistent with this chapter.

3 (C) Notify the applicant for a density bonus whether the
4 application is complete in a manner consistent with the timelines
5 specified in Section 65943.

6 (D) (i) If the local government notifies the applicant that the
7 application is deemed complete pursuant to subparagraph (C),
8 provide the applicant with a determination as to the following
9 matters:

10 (I) The amount of density bonus, calculated pursuant to
11 subdivision (f), for which the applicant is eligible.

12 (II) If the applicant requests a parking ratio pursuant to
13 subdivision (p), the parking ratio for which the applicant is eligible.

14 (III) If the applicant requests incentives or concessions pursuant
15 to subdivision (d) or waivers or reductions of development
16 standards pursuant to subdivision (e), whether the applicant has
17 provided adequate information for the local government to make
18 a determination as to those incentives, concessions, or waivers or
19 reductions of development standards.

20 (ii) Any determination required by this subparagraph shall be
21 based on the development project at the time the application is
22 deemed complete. The local government shall adjust the amount
23 of density bonus and parking ratios awarded pursuant to this section
24 based on any changes to the project during the course of
25 development.

26 (b) (1) A city, county, or city and county shall grant one density
27 bonus, the amount of which shall be as specified in subdivision
28 (f), and, if requested by the applicant and consistent with the
29 applicable requirements of this section, incentives or concessions,
30 as described in subdivision (d), waivers or reductions of
31 development standards, as described in subdivision (e), and parking
32 ratios, as described in subdivision (p), if an applicant for a housing
33 development seeks and agrees to construct a housing development,
34 excluding any units permitted by the density bonus awarded
35 pursuant to this section, that will contain at least any one of the
36 following:

37 (A) Ten percent of the total units of a housing development for
38 rental or sale to lower income households, as defined in Section
39 50079.5 of the Health and Safety Code.

1 (B) Five percent of the total units of a housing development for
2 rental or sale to very low income households, as defined in Section
3 50105 of the Health and Safety Code.

4 (C) A senior citizen housing development, as defined in Sections
5 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
6 residency based on age requirements for housing for older persons
7 pursuant to Section 798.76 or 799.5 of the Civil Code.

8 (D) Ten percent of the total dwelling units of a housing
9 development are sold to persons and families of moderate income,
10 as defined in Section 50093 of the Health and Safety Code,
11 provided that all units in the development are offered to the public
12 for purchase.

13 (E) Ten percent of the total units of a housing development for
14 transitional foster youth, as defined in Section 66025.9 of the
15 Education Code, disabled veterans, as defined in Section 18541,
16 or homeless persons, as defined in the federal McKinney-Vento
17 Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units
18 described in this subparagraph shall be subject to a recorded
19 affordability restriction of 55 years and shall be provided at the
20 same affordability level as very low income units.

21 (F) (i) Twenty percent of the total units for lower income
22 students in a student housing development that meets the following
23 requirements:

24 (I) All units in the student housing development will be used
25 exclusively for undergraduate, graduate, or professional students
26 enrolled full time at an institution of higher education accredited
27 by the Western Association of Schools and Colleges or the
28 Accrediting Commission for Community and Junior Colleges. In
29 order to be eligible under this subclause, the developer shall, as a
30 condition of receiving a certificate of occupancy, provide evidence
31 to the city, county, or city and county that the developer has entered
32 into an operating agreement or master lease with one or more
33 institutions of higher education for the institution or institutions
34 to occupy all units of the student housing development with
35 students from that institution or institutions. An operating
36 agreement or master lease entered into pursuant to this subclause
37 is not violated or breached if, in any subsequent year, there are not
38 sufficient students enrolled in an institution of higher education
39 to fill all units in the student housing development.

1 (II) The applicable 20-percent units will be used for lower
2 income students.

3 (III) The rent provided in the applicable units of the development
4 for lower income students shall be calculated at 30 percent of 65
5 percent of the area median income for a single-room occupancy
6 unit type.

7 (IV) The development will provide priority for the applicable
8 affordable units for lower income students experiencing
9 homelessness. A homeless service provider, as defined in paragraph
10 (3) of subdivision (e) of Section 103577 of the Health and Safety
11 Code, or institution of higher education that has knowledge of a
12 person's homeless status may verify a person's status as homeless
13 for purposes of this subclause.

14 (ii) For purposes of calculating a density bonus granted pursuant
15 to this subparagraph, the term "unit" as used in this section means
16 one rental bed and its pro rata share of associated common area
17 facilities. The units described in this subparagraph shall be subject
18 to a recorded affordability restriction of 55 years.

19 (G) One hundred percent of all units in the development,
20 including total units and density bonus units, but exclusive of a
21 manager's unit or units, are for lower income households, as
22 defined by Section 50079.5 of the Health and Safety Code, except
23 that up to 20 percent of the units in the development, including
24 total units and density bonus units, may be for moderate-income
25 households, as defined in Section 50053 of the Health and Safety
26 Code.

27 (2) For purposes of calculating the amount of the density bonus
28 pursuant to subdivision (f), an applicant who requests a density
29 bonus pursuant to this subdivision shall elect whether the bonus
30 shall be awarded on the basis of subparagraph (A), (B), (C), (D),
31 (E), (F), or (G) of paragraph (1).

32 (c) (1) (A) An applicant shall agree to, and the city, county,
33 or city and county shall ensure, the continued affordability of all
34 very low and low-income rental units that qualified the applicant
35 for the award of the density bonus for 55 years or a longer period
36 of time if required by the construction or mortgage financing
37 assistance program, mortgage insurance program, or rental subsidy
38 program.

1 (B) (i) Except as otherwise provided in clause (ii), rents for the
2 lower income density bonus units shall be set at an affordable rent,
3 as defined in Section 50053 of the Health and Safety Code.

4 (ii) For housing developments meeting the criteria of
5 subparagraph (G) of paragraph (1) of subdivision (b), rents for all
6 units in the development, including both base density and density
7 bonus units, shall be as follows:

8 (I) The rent for at least 20 percent of the units in the
9 development shall be set at an affordable rent, as defined in Section
10 50053 of the Health and Safety Code.

11 (II) The rent for the remaining units in the development shall
12 be set at an amount consistent with the maximum rent levels for
13 a housing development that receives an allocation of state or federal
14 low-income housing tax credits from the California Tax Credit
15 Allocation Committee.

16 (2) (A) An applicant shall agree to ensure, and the city, county,
17 or city and county shall ensure, that a for-sale unit that qualified
18 the applicant for the award of the density bonus meets either of
19 the following conditions:

20 (i) The unit is initially occupied by a person or family of very
21 low, low, or moderate income, as required, and it is offered at an
22 affordable housing cost, as that cost is defined in Section 50052.5
23 of the Health and Safety Code and is subject to an equity sharing
24 agreement.

25 (ii) The unit is purchased by a qualified nonprofit housing
26 corporation pursuant to a recorded contract that satisfies all of the
27 requirements specified in paragraph (10) of subdivision (a) of
28 Section 402.1 of the Revenue and Taxation Code and that includes
29 all of the following:

30 (I) A repurchase option that requires a subsequent purchaser of
31 the property that desires to resell or convey the property to offer
32 the qualified nonprofit corporation the right to repurchase the
33 property prior to selling or conveying that property to any other
34 purchaser.

35 (II) An equity sharing agreement.

36 (III) Affordability restrictions on the sale and conveyance of
37 the property that ensure that the property will be preserved for
38 lower income housing for at least 45 years for owner-occupied
39 housing units and will be sold or resold only to persons or families

1 of very low, low, or moderate income, as defined in Section
2 50052.5 of the Health and Safety Code.

3 (B) For purposes of this paragraph, a “qualified nonprofit
4 housing corporation” is a nonprofit housing corporation organized
5 pursuant to Section 501(c)(3) of the Internal Revenue Code that
6 has received a welfare exemption under Section 214.15 of the
7 Revenue and Taxation Code for properties intended to be sold to
8 low-income families who participate in a special no-interest loan
9 program.

10 (2) An applicant shall agree to, and the city, county, or city and
11 county shall ensure that, the initial occupant of all for-sale units
12 that qualified the applicant for the award of the density bonus are
13 persons and families of very low, low, or moderate income, as
14 required, and that the units are offered at an affordable housing
15 cost, as that cost is defined in Section 50052.5 of the Health and
16 Safety Code.

17 (C) The local government shall enforce an equity sharing
18 agreement required pursuant to clause (i) or (ii) of subparagraph
19 (A), unless it is in conflict with the requirements of another public
20 funding source or law. The following apply to the equity sharing
21 agreement:

22 (i) Upon resale, the seller of the unit shall retain the value of
23 any improvements, the downpayment, and the seller’s proportionate
24 share of appreciation.

25 (ii) Except as provided in clause (v), the local government shall
26 recapture any initial subsidy, as defined in clause (iii), and its
27 proportionate share of appreciation, as defined in clause (iv), which
28 amount shall be used within five years for any of the purposes
29 described in subdivision (e) of Section 33334.2 of the Health and
30 Safety Code that promote home ownership.

31 (iii) For purposes of this subdivision, the local government’s
32 initial subsidy shall be equal to the fair market value of the home
33 at the time of initial sale minus the initial sale price to the
34 moderate-income household, plus the amount of any downpayment
35 assistance or mortgage assistance. If upon resale the market value
36 is lower than the initial market value, then the value at the time of
37 the resale shall be used as the initial market value.

38 (iv) For purposes of this subdivision, the local government’s
39 proportionate share of appreciation shall be equal to the ratio of

1 the local government’s initial subsidy to the fair market value of
2 the home at the time of initial sale.

3 (v) If the unit is purchased or developed by a qualified nonprofit
4 housing corporation pursuant to clause (ii) of subparagraph (A)
5 the local government may enter into a contract with the qualified
6 nonprofit housing corporation under which the qualified nonprofit
7 housing corporation would recapture any initial subsidy and its
8 proportionate share of appreciation if the qualified nonprofit
9 housing corporation is required to use 100 percent of the proceeds
10 to promote homeownership for lower income households as defined
11 by Health and Safety Code Section 50079.5 within the jurisdiction
12 of the local government.

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

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

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

31 (B) For the purposes of this paragraph, “replace” shall mean
32 either of the following:

33 (i) If any dwelling units described in subparagraph (A) are
34 occupied on the date of application, the proposed housing
35 development shall provide at least the same number of units of
36 equivalent size to be made available at affordable rent or affordable
37 housing cost to, and occupied by, persons and families in the same
38 or lower income category as those households in occupancy. If
39 the income category of the household in occupancy is not known,
40 it shall be rebuttably presumed that lower income renter households

1 occupied these units in the same proportion of lower income renter
2 households to all renter households within the jurisdiction, as
3 determined by the most recently available data from the United
4 States Department of Housing and Urban Development's
5 Comprehensive Housing Affordability Strategy database. For
6 unoccupied dwelling units described in subparagraph (A) in a
7 development with occupied units, the proposed housing
8 development shall provide units of equivalent size to be made
9 available at affordable rent or affordable housing cost to, and
10 occupied by, persons and families in the same or lower income
11 category as the last household in occupancy. If the income category
12 of the last household in occupancy is not known, it shall be
13 rebuttably presumed that lower income renter households occupied
14 these units in the same proportion of lower income renter
15 households to all renter households within the jurisdiction, as
16 determined by the most recently available data from the United
17 States Department of Housing and Urban Development's
18 Comprehensive Housing Affordability Strategy database. All
19 replacement calculations resulting in fractional units shall be
20 rounded up to the next whole number. If the replacement units will
21 be rental dwelling units, these units shall be subject to a recorded
22 affordability restriction for at least 55 years. If the proposed
23 development is for-sale units, the units replaced shall be subject
24 to paragraph (2).

25 (ii) If all dwelling units described in subparagraph (A) have
26 been vacated or demolished within the five-year period preceding
27 the application, the proposed housing development shall provide
28 at least the same number of units of equivalent size as existed at
29 the highpoint of those units in the five-year period preceding the
30 application to be made available at affordable rent or affordable
31 housing cost to, and occupied by, persons and families in the same
32 or lower income category as those persons and families in
33 occupancy at that time, if known. If the incomes of the persons
34 and families in occupancy at the highpoint is not known, it shall
35 be rebuttably presumed that low-income and very low income
36 renter households occupied these units in the same proportion of
37 low-income and very low income renter households to all renter
38 households within the jurisdiction, as determined by the most
39 recently available data from the United States Department of
40 Housing and Urban Development's Comprehensive Housing

1 Affordability Strategy database. All replacement calculations
2 resulting in fractional units shall be rounded up to the next whole
3 number. If the replacement units will be rental dwelling units,
4 these units shall be subject to a recorded affordability restriction
5 for at least 55 years. If the proposed development is for-sale units,
6 the units replaced shall be subject to paragraph (2).

7 (C) Notwithstanding subparagraph (B), for any dwelling unit
8 described in subparagraph (A) that is or was, within the five-year
9 period preceding the application, subject to a form of rent or price
10 control through a local government’s valid exercise of its police
11 power and that is or was occupied by persons or families above
12 lower income, the city, county, or city and county may do either
13 of the following:

14 (i) Require that the replacement units be made available at
15 affordable rent or affordable housing cost to, and occupied by,
16 low-income persons or families. If the replacement units will be
17 rental dwelling units, these units shall be subject to a recorded
18 affordability restriction for at least 55 years. If the proposed
19 development is for-sale units, the units replaced shall be subject
20 to paragraph (2).

21 (ii) Require that the units be replaced in compliance with the
22 jurisdiction’s rent or price control ordinance, provided that each
23 unit described in subparagraph (A) is replaced. Unless otherwise
24 required by the jurisdiction’s rent or price control ordinance, these
25 units shall not be subject to a recorded affordability restriction.

26 (D) For purposes of this paragraph, “equivalent size” means
27 that the replacement units contain at least the same total number
28 of bedrooms as the units being replaced.

29 (E) Subparagraph (A) does not apply to an applicant seeking a
30 density bonus for a proposed housing development if the
31 applicant’s application was submitted to, or processed by, a city,
32 county, or city and county before January 1, 2015.

33 (d) (1) An applicant for a density bonus pursuant to subdivision
34 (b) may submit to a city, county, or city and county a proposal for
35 the specific incentives or concessions that the applicant requests
36 pursuant to this section, and may request a meeting with the city,
37 county, or city and county. The city, county, or city and county
38 shall grant the concession or incentive requested by the applicant
39 unless the city, county, or city and county makes a written finding,
40 based upon substantial evidence, of any of the following:

1 (A) The concession or incentive does not result in identifiable
2 and actual cost reductions, consistent with subdivision (k), to
3 provide for affordable housing costs, as defined in Section 50052.5
4 of the Health and Safety Code, or for rents for the targeted units
5 to be set as specified in subdivision (c).

6 (B) The concession or incentive would have a specific, adverse
7 impact, as defined in paragraph (2) of subdivision (d) of Section
8 65589.5, upon public health and safety or on any real property that
9 is listed in the California Register of Historical Resources and for
10 which there is no feasible method to satisfactorily mitigate or avoid
11 the specific, adverse impact without rendering the development
12 unaffordable to low-income and moderate-income households.

13 (C) The concession or incentive would be contrary to state or
14 federal law.

15 (2) The applicant shall receive the following number of
16 incentives or concessions:

17 (A) One incentive or concession for projects that include at least
18 10 percent of the total units for lower income households, at least
19 5 percent for very low income households, or at least 10 percent
20 for persons and families of moderate income in a development in
21 which the units are for sale.

22 (B) Two incentives or concessions for projects that include at
23 least 17 percent of the total units for lower income households, at
24 least 10 percent for very low income households, or at least 20
25 percent for persons and families of moderate income in a
26 development in which the units are for sale.

27 (C) Three incentives or concessions for projects that include at
28 least 24 percent of the total units for lower income households, at
29 least 15 percent for very low income households, or at least 30
30 percent for persons and families of moderate income in a
31 development in which the units are for sale.

32 (D) Four incentives or concessions for a project meeting the
33 criteria of subparagraph (G) of paragraph (1) of subdivision (b).
34 If the project is located within one-half mile of a major transit stop,
35 the applicant shall also receive a height increase of up to three
36 additional stories, or 33 feet.

37 (E) One incentive or concession for projects that include at least
38 20 percent of the total units for lower income students in a student
39 housing development.

1 (3) The applicant may initiate judicial proceedings if the city,
2 county, or city and county refuses to grant a requested density
3 bonus, incentive, or concession. If a court finds that the refusal to
4 grant a requested density bonus, incentive, or concession is in
5 violation of this section, the court shall award the plaintiff
6 reasonable attorney’s fees and costs of suit. This subdivision shall
7 not be interpreted to require a local government to grant an
8 incentive or concession that has a specific, adverse impact, as
9 defined in paragraph (2) of subdivision (d) of Section 65589.5,
10 upon health or safety, and for which there is no feasible method
11 to satisfactorily mitigate or avoid the specific adverse impact. This
12 subdivision shall not be interpreted to require a local government
13 to grant an incentive or concession that would have an adverse
14 impact on any real property that is listed in the California Register
15 of Historical Resources. The city, county, or city and county shall
16 establish procedures for carrying out this section that shall include
17 legislative body approval of the means of compliance with this
18 section.

19 (4) The city, county, or city and county shall bear the burden
20 of proof for the denial of a requested concession or incentive.

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. Subject to paragraph (3), an
26 applicant may submit to a city, county, or city and county a
27 proposal for the waiver or reduction of development standards that
28 will have the effect of physically precluding the construction of a
29 development meeting the criteria of subdivision (b) at the densities
30 or with the concessions or incentives permitted under this section,
31 and may request a meeting with the city, county, or city and county.
32 If a 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. This subdivision shall not be interpreted to require a local
36 government to waive or reduce development standards if the waiver
37 or reduction would have a specific, adverse impact, as defined in
38 paragraph (2) of subdivision (d) of Section 65589.5, upon health
39 or safety, and for which there is no feasible method to satisfactorily
40 mitigate or avoid the specific adverse impact. This subdivision

1 shall not be interpreted to require a local government to waive or
2 reduce development standards that would have an adverse impact
3 on any real property that is listed in the California Register of
4 Historical Resources, or to grant any waiver or reduction that would
5 be contrary to state or federal law.

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

10 (3) A housing development that receives a waiver from any
11 maximum controls on density pursuant to clause (ii) of
12 subparagraph (D) of paragraph (3) of subdivision (f) shall only be
13 eligible for a waiver or reduction of development standards as
14 provided in subparagraph (D) of paragraph (2) of subdivision (d)
15 and clause (ii) of subparagraph (D) of paragraph (3) of subdivision
16 (f), unless the city, county, or city and county agrees to additional
17 waivers or reductions of development standards.

18 (f) For the purposes of this chapter, “density bonus” means a
19 density increase over the otherwise maximum allowable gross
20 residential density as of the date of application by the applicant to
21 the city, county, or city and county, or, if elected by the applicant,
22 a lesser percentage of density increase, including, but not limited
23 to, no increase in density. The amount of density increase to which
24 the applicant is entitled shall vary according to the amount by
25 which the percentage of affordable housing units exceeds the
26 percentage established in subdivision (b).

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

| | Percentage Low-Income Units | Percentage Density Bonus |
|----|-----------------------------|--------------------------|
| 30 | | |
| 31 | | |
| 32 | | |
| 33 | 10 | 20 |
| 34 | 11 | 21.5 |
| 35 | 12 | 23 |
| 36 | 13 | 24.5 |
| 37 | 14 | 26 |
| 38 | 15 | 27.5 |
| 39 | 16 | 29 |
| 40 | 17 | 30.5 |

| | | |
|---|----|-------|
| 1 | 18 | 32 |
| 2 | 19 | 33.5 |
| 3 | 20 | 35 |
| 4 | 21 | 38.75 |
| 5 | 22 | 42.5 |
| 6 | 23 | 46.25 |
| 7 | 24 | 50 |

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18 (2) For housing developments meeting the criteria of
19 subparagraph (B) of paragraph (1) of subdivision (b), the density
20 bonus shall be calculated as follows:

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| 22 | Percentage Very Low Income Units | Percentage Density Bonus |
|----|----------------------------------|--------------------------|
| 23 | 5 | 20 |
| 24 | 6 | 22.5 |
| 25 | 7 | 25 |
| 26 | 8 | 27.5 |
| 27 | 9 | 30 |
| 28 | 10 | 32.5 |
| 29 | 11 | 35 |
| 30 | 12 | 38.75 |
| 31 | 13 | 42.5 |
| 32 | 14 | 46.25 |
| 33 | 15 | 50 |

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

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

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

| Percentage Moderate-Income Units | Percentage Density Bonus |
|----------------------------------|--------------------------|
| 10 | 5 |
| 11 | 6 |
| 12 | 7 |
| 13 | 8 |
| 14 | 9 |
| 15 | 10 |
| 16 | 11 |
| 17 | 12 |
| 18 | 13 |
| 19 | 14 |

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| 13 | 32 | 27 |
| 14 | 33 | 28 |
| 15 | 34 | 29 |
| 16 | 35 | 30 |
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| 19 | 38 | 33 |
| 20 | 39 | 34 |
| 21 | 40 | 35 |
| 22 | 41 | 38.75 |
| 23 | 42 | 42.5 |
| 24 | 43 | 46.25 |
| 25 | 44 | 50 |

27 (5) All density calculations resulting in fractional units shall be
 28 rounded up to the next whole number. The granting of a density
 29 bonus shall not require, or be interpreted, in and of itself, to require
 30 a general plan amendment, local coastal plan amendment, zoning
 31 change, or other discretionary approval.

32 (6) *Affordable housing impact fees, including inclusionary*
 33 *zoning fees, in-lieu fees, and public benefit fees, shall not be*
 34 *imposed on a housing development’s density bonus units.*

35 (g) (1) When an applicant for a tentative subdivision map,
 36 parcel map, or other residential development approval donates
 37 land to a city, county, or city and county in accordance with this
 38 subdivision, the applicant shall be entitled to a 15-percent increase
 39 above the otherwise maximum allowable residential density for
 40 the entire development, as follows:

| | Percentage Very Low Income | Percentage Density Bonus |
|----|----------------------------|--------------------------|
| 1 | | |
| 2 | 10 | 15 |
| 3 | 11 | 16 |
| 4 | 12 | 17 |
| 5 | 13 | 18 |
| 6 | 14 | 19 |
| 7 | 15 | 20 |
| 8 | 16 | 21 |
| 9 | 17 | 22 |
| 10 | 18 | 23 |
| 11 | 19 | 24 |
| 12 | 20 | 25 |
| 13 | 21 | 26 |
| 14 | 22 | 27 |
| 15 | 23 | 28 |
| 16 | 24 | 29 |
| 17 | 25 | 30 |
| 18 | 26 | 31 |
| 19 | 27 | 32 |
| 20 | 28 | 33 |
| 21 | 29 | 34 |
| 22 | 30 | 35 |

23
24 (2) This increase shall be in addition to any increase in density
25 mandated by subdivision (b), up to a maximum combined mandated
26 density increase of 35 percent if an applicant seeks an increase
27 pursuant to both this subdivision and subdivision (b). All density
28 calculations resulting in fractional units shall be rounded up to the
29 next whole number. Nothing in this subdivision shall be construed
30 to enlarge or diminish the authority of a city, county, or city and
31 county to require a developer to donate land as a condition of
32 development. An applicant shall be eligible for the increased
33 density bonus described in this subdivision if all of the following
34 conditions are met:

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

38 (B) The developable acreage and zoning classification of the
39 land being transferred are sufficient to permit construction of units
40 affordable to very low income households in an amount not less

1 than 10 percent of the number of residential units of the proposed
2 development.

3 (C) The transferred land is at least one acre in size or of
4 sufficient size to permit development of at least 40 units, has the
5 appropriate general plan designation, is appropriately zoned with
6 appropriate development standards for development at the density
7 described in paragraph (3) of subdivision (c) of Section 65583.2,
8 and is or will be served by adequate public facilities and
9 infrastructure.

10 (D) The transferred land shall have all of the permits and
11 approvals, other than building permits, necessary for the
12 development of the very low income housing units on the
13 transferred land, not later than the date of approval of the final
14 subdivision map, parcel map, or residential development
15 application, except that the local government may subject the
16 proposed development to subsequent design review to the extent
17 authorized by subdivision (i) of Section 65583.2 if the design is
18 not reviewed by the local government before the time of transfer.

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

23 (F) The land is transferred to the local agency or to a housing
24 developer approved by the local agency. The local agency may
25 require the applicant to identify and transfer the land to the
26 developer.

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

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

34 (h) (1) When an applicant proposes to construct a housing
35 development that conforms to the requirements of subdivision (b)
36 and includes a childcare facility that will be located on the premises
37 of, as part of, or adjacent to, the project, the city, county, or city
38 and county shall grant either of the following:

1 (A) An additional density bonus that is an amount of square
2 feet of residential space that is equal to or greater than the amount
3 of square feet in the childcare facility.

4 (B) An additional concession or incentive that contributes
5 significantly to the economic feasibility of the construction of the
6 childcare facility.

7 (2) The city, county, or city and county shall require, as a
8 condition of approving the housing development, that the following
9 occur:

10 (A) The childcare facility shall remain in operation for a period
11 of time that is as long as or longer than the period of time during
12 which the density bonus units are required to remain affordable
13 pursuant to subdivision (c).

14 (B) Of the children who attend the childcare facility, the children
15 of very low income households, lower income households, or
16 families of moderate income shall equal a percentage that is equal
17 to or greater than the percentage of dwelling units that are required
18 for very low income households, lower income households, or
19 families of moderate income pursuant to subdivision (b).

20 (3) Notwithstanding any requirement of this subdivision, a city,
21 county, or city and county shall not be required to provide a density
22 bonus or concession for a childcare facility if it finds, based upon
23 substantial evidence, that the community has adequate childcare
24 facilities.

25 (4) “Childcare facility,” as used in this section, means a child
26 daycare facility other than a family daycare home, including, but
27 not limited to, infant centers, preschools, extended daycare
28 facilities, and schoolage childcare centers.

29 (i) “Housing development,” as used in this section, means a
30 development project for five or more residential units, including
31 mixed-use developments. For the purposes of this section, “housing
32 development” also includes a subdivision or common interest
33 development, as defined in Section 4100 of the Civil Code,
34 approved by a city, county, or city and county and consists of
35 residential units or unimproved residential lots and either a project
36 to substantially rehabilitate and convert an existing commercial
37 building to residential use or the substantial rehabilitation of an
38 existing multifamily dwelling, as defined in subdivision (d) of
39 Section 65863.4, where the result of the rehabilitation would be a
40 net increase in available residential units. For the purpose of

1 calculating a density bonus, the residential units shall be on
2 contiguous sites that are the subject of one development
3 application, but do not have to be based upon individual
4 subdivision maps or parcels. The density bonus shall be permitted
5 in geographic areas of the housing development other than the
6 areas where the units for the lower income households are located.

7 (j) (1) The granting of a concession or incentive shall not require
8 or be interpreted, in and of itself, to require a general plan
9 amendment, local coastal plan amendment, zoning change, study,
10 or other discretionary approval. For purposes of this subdivision,
11 “study” does not include reasonable documentation to establish
12 eligibility for the concession or incentive or to demonstrate that
13 the incentive or concession meets the definition set forth in
14 subdivision (k). This provision is declaratory of existing law.

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

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

21 (1) A reduction in site development standards or a modification
22 of zoning code requirements or architectural design requirements
23 that exceed the minimum building standards approved by the
24 California Building Standards Commission as provided in Part 2.5
25 (commencing with Section 18901) of Division 13 of the Health
26 and Safety Code, including, but not limited to, a reduction in
27 setback and square footage requirements and in the ratio of
28 vehicular parking spaces that would otherwise be required that
29 results in identifiable and actual cost reductions, to provide for
30 affordable housing costs, as defined in Section 50052.5 of the
31 Health and Safety Code, or for rents for the targeted units to be
32 set as specified in subdivision (c).

33 (2) Approval of mixed-use zoning in conjunction with the
34 housing project if commercial, office, industrial, or other land uses
35 will reduce the cost of the housing development and if the
36 commercial, office, industrial, or other land uses are compatible
37 with the housing project and the existing or planned development
38 in the area where the proposed housing project will be located.

39 (3) Other regulatory incentives or concessions proposed by the
40 developer or the city, county, or city and county that result in

1 identifiable and actual cost reductions to provide for affordable
2 housing costs, as defined in Section 50052.5 of the Health and
3 Safety Code, or for rents for the targeted units to be set as specified
4 in subdivision (c).

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

9 (m) This section does not supersede or in any way alter or lessen
10 the effect or application of the California Coastal Act of 1976
11 (Division 20 (commencing with Section 30000) of the Public
12 Resources Code). Any density bonus, concessions, incentives,
13 waivers or reductions of development standards, and parking ratios
14 to which the applicant is entitled under this section shall be
15 permitted in a manner that is consistent with this section and
16 Division 20 (commencing with Section 30000) of the Public
17 Resources Code.

18 (n) If permitted by local ordinance, nothing in this section shall
19 be construed to prohibit a city, county, or city and county from
20 granting a density bonus greater than what is described in this
21 section or from granting a proportionately lower density bonus
22 than what is required by this section for developments that do not
23 meet the requirements of this section.

24 (o) For purposes of this section, the following definitions shall
25 apply:

26 (1) "Development standard" includes a site or construction
27 condition, including, but not limited to, a height limitation, a
28 setback requirement, a floor area ratio, an onsite open-space
29 requirement, or a parking ratio that applies to a residential
30 development pursuant to any ordinance, general plan element,
31 specific plan, charter, or other local condition, law, policy,
32 resolution, or regulation.

33 (2) "Located within one-half mile of a major transit stop" means
34 that any point on a proposed development, for which an applicant
35 seeks a density bonus, other incentives or concessions, waivers or
36 reductions of development standards, or a vehicular parking ratio
37 pursuant to this section, is within one-half mile of any point on
38 the property on which a major transit stop is located, including
39

1 any parking lot owned by the transit authority or other local agency
2 operating the major transit stop.

3 (3) “Lower income student” means a student who has a
4 household income and asset level that does not exceed the level
5 for Cal Grant A or Cal Grant B award recipients as set forth in
6 paragraph (1) of subdivision (k) of Section 69432.7 of the
7 Education Code. The eligibility of a student to occupy a unit for
8 lower income students under this section shall be verified by an
9 affidavit, award letter, or letter of eligibility provided by the
10 institution of higher education in which the student is enrolled or
11 by the California Student Aid Commission that the student receives
12 or is eligible for financial aid, including an institutional grant or
13 fee waiver from the college or university, the California Student
14 Aid Commission, or the federal government.

15 (4) “Major transit stop” has the same meaning as defined in
16 subdivision (b) of Section 21155 of the Public Resources Code.

17 (5) “Maximum allowable residential density” means the density
18 allowed under the zoning ordinance and land use element of the
19 general plan, or, if a range of density is permitted, means the
20 maximum allowable density for the specific zoning range and land
21 use element of the general plan applicable to the project. If the
22 density allowed under the zoning ordinance is inconsistent with
23 the density allowed under the land use element of the general plan,
24 the general plan density shall prevail.

25 (6) “Total units” or “total dwelling units” means a calculation
26 of the number of units that:

27 (A) Excludes a unit added by a density bonus awarded pursuant
28 to this section or any local law granting a greater density bonus.

29 (B) Includes a unit designated to satisfy an inclusionary zoning
30 requirement of a city, county, or city and county.

31 (p) (1) Except as provided in paragraphs (2), (3), and (4), upon
32 the request of the developer, a city, county, or city and county shall
33 not require a vehicular parking ratio, inclusive of parking for
34 persons with a disability and guests, of a development meeting the
35 criteria of subdivisions (b) and (c), that exceeds the following
36 ratios:

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

38 (B) Two to three bedrooms: one and one-half onsite parking
39 spaces.

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

1 (2) (A) Notwithstanding paragraph (1), if a development
2 includes at least 20 percent low-income units for housing
3 developments meeting the criteria of subparagraph (A) of paragraph
4 (1) of subdivision (b) or at least 11 percent very low income units
5 for housing developments meeting the criteria of subparagraph
6 (B) of paragraph (1) of subdivision (b), is located within one-half
7 mile of a major transit stop, and there is unobstructed access to
8 the major transit stop from the development, then, upon the request
9 of the developer, a city, county, or city and county shall not impose
10 a vehicular parking ratio, inclusive of parking for persons with a
11 disability and guests, that exceeds 0.5 spaces per unit.
12 Notwithstanding paragraph (1), if a development includes at least
13 40 percent moderate-income units for housing developments
14 meeting the criteria of subparagraph (D) of paragraph (1) of
15 subdivision (b), is located within one-half mile of a major transit
16 stop, as defined in subdivision (b) of Section 21155 of the Public
17 Resources Code, and the residents of the development have
18 unobstructed access to the major transit stop from the development
19 then, upon the request of the developer, a city, county, or city and
20 county shall not impose a vehicular parking ratio, inclusive of
21 parking for persons with a disability and guests, that exceeds 0.5
22 spaces per bedroom.

23 (B) For purposes of this subdivision, “unobstructed access to
24 the major transit stop” means a resident is able to access the major
25 transit stop without encountering natural or constructed
26 impediments. For purposes of this subparagraph, “natural or
27 constructed impediments” includes, but is not limited to, freeways,
28 rivers, mountains, and bodies of water, but does not include
29 residential structures, shopping centers, parking lots, or rails used
30 for transit.

31 (3) Notwithstanding paragraph (1), if a development consists
32 solely of rental units, exclusive of a manager’s unit or units, with
33 an affordable housing cost to lower income families, as provided
34 in Section 50052.5 of the Health and Safety Code, then, upon the
35 request of the developer, a city, county, or city and county shall
36 not impose vehicular parking standards if the development meets
37 either of the following criteria:

38 (A) The development is located within one-half mile of a major
39 transit stop and there is unobstructed access to the major transit
40 stop from the development.

1 (B) The development is a for-rent housing development for
 2 individuals who are 62 years of age or older that complies with
 3 Sections 51.2 and 51.3 of the Civil Code and the development has
 4 either paratransit service or unobstructed access, within one-half
 5 mile, to fixed bus route service that operates at least eight times
 6 per day.

7 (4) Notwithstanding paragraphs (1) and (8), if a development
 8 consists solely of rental units, exclusive of a manager’s unit or
 9 units, with an affordable housing cost to lower income families,
 10 as provided in Section 50052.5 of the Health and Safety Code, and
 11 the development is either a special needs housing development,
 12 as defined in Section 51312 of the Health and Safety Code, or a
 13 supportive housing development, as defined in Section 50675.14
 14 of the Health and Safety Code, then, upon the request of the
 15 developer, a city, county, or city and county shall not impose any
 16 minimum vehicular parking requirement. A development that is
 17 a special needs housing development shall have either paratransit
 18 service or unobstructed access, within one-half mile, to fixed bus
 19 route service that operates at least eight times per day.

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

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

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

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

1 availability, differing levels of transit access, walkability access
2 to transit services, the potential for shared parking, the effect of
3 parking requirements on the cost of market-rate and subsidized
4 developments, and the lower rates of car ownership for low-income
5 and very low income individuals, including seniors and special
6 needs individuals. The city, county, or city and county shall pay
7 the costs of any new study. The city, county, or city and county
8 shall make findings, based on a parking study completed in
9 conformity with this paragraph, supporting the need for the higher
10 parking ratio.

11 (9) A request pursuant to this subdivision shall neither reduce
12 nor increase the number of incentives or concessions to which the
13 applicant is entitled pursuant to subdivision (d).

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

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

20 (s) Notwithstanding any other law, if a city, including a charter
21 city, county, or city and county has adopted an ordinance or a
22 housing program, or both an ordinance and a housing program,
23 that incentivizes the development of affordable housing that allows
24 for density bonuses that exceed the density bonuses required by
25 the version of this section effective through December 31, 2020,
26 that city, county, or city and county is not required to amend or
27 otherwise update its ordinance or corresponding affordable housing
28 incentive program to comply with the amendments made to this
29 section by the act adding this subdivision, and is exempt from
30 complying with the incentive and concession calculation
31 amendments made to this section by the act adding this subdivision
32 as set forth in subdivision (d), particularly subparagraphs (B) and
33 (C) of paragraph (2) of that subdivision, and the amendments made
34 to the density tables under subdivision (f).

35 (t) (1) The Legislature finds and declares that the intent behind
36 the Density Bonus Law is to allow public entities to reduce or even
37 eliminate subsidies for a particular project by allowing a developer
38 to include more total units in a project than would otherwise be
39 allowed by the local zoning ordinance in exchange for affordable
40 units. It further reaffirms that the intent is to cover at least some

1 of the financing gap of affordable housing with regulatory
2 incentives, rather than additional public subsidy.

3 (2) It is therefore the intent of the Legislature to make
4 modifications to the Density Bonus Law by the act adding this
5 subdivision to further incentivize the construction of very low,
6 low-, and moderate-income housing units. It is further the intent
7 of the Legislature in making these modifications to the Density
8 Bonus Law to ensure that any additional benefits conferred upon
9 a developer are balanced with the receipt of a public benefit in the
10 form of adequate levels of affordable housing. The Legislature
11 further intends that these modifications will ensure that the Density
12 Bonus Law creates incentives for the construction of more housing
13 across all areas of the state.

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