

Date of Hearing: January 12, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1551 (Santiago) – As Amended January 3, 2022

**SUBJECT:** Planning and zoning: development bonuses: mixed-use projects.

**SUMMARY:** Reinstates provisions of law that require counties and cities to grant a development bonus for specified commercial developments that also contribute affordable housing. Specifically, **this bill**:

- 1) Requires a city, county or city and county to grant a development bonus to a commercial developer that enters into an agreement for partnered housing with a housing developer to contribute affordable housing either through a joint project or two separate projects encompassing affordable housing, as specified.
- 2) Requires housing to be constructed on the site of the commercial development or on a site that is all of the following:
  - a) Within the boundaries of the local government.
  - b) In close proximity to public amenities including schools and employment centers.
  - c) Located within one-half mile of a major transit stop, as specified.
- 3) Provides that the development bonus granted to the commercial developer may include, but is not limited to, any of the following incentives, mutually agreed upon by the developer and the jurisdiction:
  - a) Up to a 20% increase in maximum allowable intensity in the General Plan.
  - b) Up to a 20% increase in maximum allowable floor area ratio.
  - c) Up to a 20% increase in maximum height requirements.
  - d) Up to a 20% reduction in minimum parking requirements.
  - e) Use of a limited-use/limited-application elevator for upper floor accessibility.
  - f) An exception to a zoning ordinance or other land use regulation.
- 4) Requires the agreement for partnered housing to:
  - a) Be between the commercial developer and the housing developer.
  - b) Identify how the commercial developer will contribute affordable housing.
  - c) Be approved by the city, county, or city and county.

- 5) Allows affordable housing to be contributed by the commercial developer in one of the following manners:
  - a) The commercial developer may directly build the units.
  - b) The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing.
  - c) The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.
- 6) Provides that a commercial project cannot be eligible for a development bonus if the proposed site contains or contained lower-income housing, as specified.
- 7) Provides that nothing in this bill shall preclude any additional allowances or incentives offered to developers by local governments pursuant to law or regulation.
- 8) Allows, if the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement required by this bill, the local government to withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.
- 9) Requires, in order to qualify for a development bonus under this bill, a commercial developer to partner with a housing developer that provides at least 30% of the total units for low-income households or at least 15% of the total units for very low-income households.
- 10) Provides that nothing in this bill shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under specified provisions of existing law.
- 11) Prohibits a development bonus pursuant to this bill from including a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.
- 12) Requires a city or county to submit to the Department of Housing and Community Development (HCD), as part of the annual report required by existing law, information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.
- 13) Defines, for purposes of this bill, “partner” to mean formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.

- 14) Finds and declares that the development of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution and, therefore, this bill applies to all cities, including charter cities.
- 15) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, as specified.

**EXISTING LAW:**

- 1) Allows a city or county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public, including land use authority.
- 2) Requires cities and counties to adopt a general plan for the physical development of the city or county and authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties.
- 3) Under Density Bonus Law, requires cities and counties to grant a density bonus and award other incentives or concessions to an applicant for a housing development of five or more units that agrees to set aside a minimum number of units that are affordable to households with low, very-low, or moderate income.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **California’s Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes contributed to the lack of housing production. Recent reports by the Legislative Analyst’s Office and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to review under the California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 2) **Density Bonus Law.** Density Bonus Law was originally enacted in 1979, to help address a shortage of affordable housing. Over 40 years later, the state faces the same if not worse affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for including affordable units in a development, developers receive an increase in density over a local government’s zoned density, concessions and incentives, and reductions in parking. The increase in density and

concessions and incentives are intended to financially support the inclusion of the affordable units.

Local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law.

Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

- a) Ten percent of the total units for lower income households.
  - b) Five percent of the total units for very low income households.
  - c) A senior citizen housing development or mobilehome park.
  - d) Ten percent of the units in a common interest development for moderate income households.
  - e) Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons.
  - f) Twenty percent of the total units for lower income students in a student housing development, as specified.
- 3) **AB 1934 – Commercial Development Bonus.** AB 1934 (Santiago), Chapter 747, Statutes of 2016, created a commercial “development bonus” modeled after Density Bonus Law by similarly granting a number of incentives (including an increase in density) to a commercial developer that facilitates the creation of affordable housing units. However, unlike Density Bonus Law, AB 1934 did not provide a specified formula regarding the benefits conferred upon the developer in return for provision of affordable housing. It also did not require the local government to provide clear guidance on the concessions and incentives available to the developer. Instead, the program relied on the commercial developer, residential developer, and local jurisdiction to come to mutual agreement on most of the details of the incentives, including the amount and type of bonus received and the amount and income levels of affordable housing developed. It did, however, require the commercial developer to partner with a housing developer that provides at least 30% of the total units for low-income households or at least 15% of the total units for very low-income households.

AB 1934 expired on January 1, 2022, pursuant to a sunset date in the bill. There does not appear to be evidence that the provisions of the bill were widely used before the bill expired. AB 1934 required that local governments report use of the program to HCD as part of their annual progress reports. Data provided by HCD revealed that only five units of affordable housing had been created due to the program across three projects. It is unknown whether additional projects used this program but were not reflected in local governments’ annual progress reports.

- 4) **Bill Summary and Author’s Statement.** This bill reinstates the commercial development bonus created by AB 1934. This bill is sponsored by the author. According to the author, “AB 1551 seeks to continue the progress made from AB 1934 to address California’s affordable housing crisis. Increasing the number of affordable units can help the thousands of people who experience homelessness in our state. With the help of AB 1551’s extension, California will create more opportunities to create affordable housing and allow more time for interested parties to use this law to build a housing supply in our state.”
- 5) **Policy Consideration.** AB 1934 contained a sunset date, as is not uncommon for new programs or authorizations. While this bill reinstates all of the prior provisions of AB 1934, it contains no sunset date. This is also noted in the Housing and Community Development Committee’s analysis of this bill, which states, “This bill seeks to reinstate the commercial density program that expired on January 1, 2022...To the degree the program continues to not be widely utilized, the committee may wish to consider amending the bill to reinstate a five-year sunset provision, such that the program re-established by this bill would be repealed on January 1, 2028. Due to procedural issues, this amendment would be taken in the Assembly Committee on Local Government.”
- 6) **Committee Amendment.** The author committed to accepting the above-referenced amendment in Housing and Community Development Committee. Due to timing, this amendment – to add a sunset date of January 1, 2028 – must be taken in this committee.
- 7) **Previous Legislation.** AB 1934 (Santiago), Chapter 747, Statutes of 2016, created, through January 1, 2022, a development bonus when a commercial developer enters into an agreement for partnered housing to contribute affordable housing through a joint project or two separate projects encompassing affordable housing.
- 8) **Arguments in Support.** None on file.
- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it is set for hearing on January 12, 2022.

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file

**Opposition**

None on file

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