

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2063 (Berman) – As Amended March 29, 2022

SUBJECT: Density bonuses: affordable housing impact fees.

SUMMARY: Prohibits a city, county, or city and county from charging affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, on a housing development's density bonus units. Specifically, **this bill:**

- 1) Prohibits a city, county, or city and county from charging affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, on a housing development's density bonus units unless the following applies:
 - a) A city, county, or city and county has adopted a local density bonus ordinance or established a local housing program on or before January 1, 2022, that allows for a density bonus of at least 50 percent for any for-sale or rental housing development that does one of the following:
 - i) Restricts 40 percent of the total units to moderate income.
 - ii) Restricts at least 20 percent of the units to lower-income.
 - iii) Restricts at least 11 percent of the units to very low-income.
 - iv) Restricts at least 8 percent of the units to extremely low income.
- 2) 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.

EXISTING LAW:

- 1) Establishes density bonus law which includes the following provisions and requirements:
 - a) Requires cities and counties to grant a density bonus, based on a specified formula, 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:
 - i) Ten percent of the total units of a housing development for low-income households.
 - ii) Five percent of the total units of a housing development for very low-income households.
 - iii) A senior citizen housing development or mobile home park.
 - iv) Ten percent of the units in a common interest development (CID) for moderate-income households.

- v) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons.
 - vi) Twenty percent of the total units for lower income students in a student housing development, as specified.
 - vii) Rental units must remain affordable for 55 years unless a subsidy program requires longer period.
- b) Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however, request additional parking incentives or concessions):
- i) Zero to one bedrooms: one onsite parking space per unit.
 - ii) Two to three bedrooms: one and one-half onsite parking spaces per unit.
 - iii) Four or more bedrooms: two and one-half parking spaces per unit.
- c) Provides that, if a rental development is 100 percent affordable to lower income families, upon the request of a developer, a city, county, or city and county must not impose vehicular parking standards if the development is any of the following:
- i) Located within one-half mile of a "major transit stop" and there is unobstructed access to the major transit stop from the development.
 - ii) For-rent housing development for individuals who are 62 years of age or older.
 - iii) A special needs housing development.
- 2) Requires applicants to receive the following number of incentives or concessions:
- a) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for moderate income persons and families in a common interest development.
 - b) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for moderate income persons and families in common interest developments.
 - c) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for moderate income persons and families in common interest developments.
- 3) Permits an applicant to submit to a local government a proposal for the specific incentives or concessions that the applicant requests, as specified, and allows the applicant to request a meeting with the local government.

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

COMMENTS:

- 1) **Bill Summary.** This bill prohibits a local government from charging affordable housing impact fees on the bonus units included in a density bonus project. The bill specifies that affordable housing impact fees include inclusionary zoning fees, public benefit fees, and in-lieu fees. The bill exempts from its provisions local agencies that, prior to January 1, 2022 adopted ordinances that allow for a density bonus of 50 percent if specified percentages of affordable units are included in the project.

This bill is sponsored by the Housing Action Coalition.

- 2) **Author's Statement.** According to the author, "Density bonus law is a unique tool to encourage the production of affordable housing. In return for including affordable units in a housing development, developers are given an increase in density over a city's zoned density, known as density bonus units. The increase in density is intended to financially support the inclusion of the affordable units. However, affordable housing impact fees on density bonus units have had the opposite effect by undermining the intent of density bonus law and can prevent affordable housing from actually getting built. AB 2063 would ensure that such fees on a housing development's density bonus units can no longer hinder the creation of affordable housing that Californians so desperately need."
- 3) **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 are given an increase in density over a city'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.

All 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 of a housing for very low income households.
- c) A senior citizen housing development or mobile home 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.

One-hundred percent affordable developments can receive an enhanced density bonus of up to 80 percent anywhere in the state or unlimited density near transit. Otherwise, the maximum amount of density a development can receive is 50 percent in exchanged for including either 15 percent very low-income units or 24 percent low-income units. Developers are not required to take the density bonus but can access the concession and incentives and parking reductions provided that they include the required amount of affordable housing.

- 4) **Fees on Density Bonus Units.** This bill would prohibit affordable housing fees (inclusionary, in lieu, and public benefit fees) on density bonus units, but a local government could continue to charge impact fees on housing developments that are used to pay for the infrastructure associated with the development as well as perceived impacts that result from more housing units. Some jurisdictions impose inclusionary housing requirements that can be fulfilled by either providing housing onsite or by paying an in lieu fee that funds affordable housing in the community.

Developers are not required to build the additional density bonus units. Some developers do not take the additional density but use density bonus program to get access to the concessions and incentives that are available under density bonus law. Both are designed to reduce the overall cost of the development and support the inclusion of affordable units. Nothing in this bill prevents a local government from charging fees on the base market rate units; it only applies to the additional market rate units that a developer receives a result of the density bonus.

- 5) **San Francisco and Los Angeles.** While several jurisdictions charge affordable housing fees, committee staff is only aware of two jurisdictions, the City of San Francisco and the City of Los Angeles, that charge affordable housing fees on the “bonus units” or the additional market rate units that result from a density bonus. The City of Los Angeles adopted an ordinance that meets the criteria specified in this bill and would be able to continue charging affordable housing impact fees on bonus units under the provisions of this bill. This bill would apply to the City of San Francisco, it is unclear how many “bonus units,” if any, were built in the City of San Francisco since it adopted its affordable housing fees and applied them to bonus units.
- 6) **Committee Amendment.** The Committee may wish to consider amending the bill to clarify that the legislation only limits the application of fees for affordable housing development, the Committee may wish to strike “public benefit fees” in from the definition of affordable housing impact fees.
- 7) **Previous Legislation.** AB 571 (Mayes), Chapter 346, Statutes of 2021 prohibits local agencies from charging affordable housing impact fees on the affordable units in a density bonus project.

- 8) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee, where it passed on a 7-0 vote on April 5th, 2022.
- 9) **Arguments in Support.** Habitat for Humanity writes in support, “The State Density Bonus law was enacted to increase the overall housing stock, and subsidized affordable housing stock, in California. In addition to the subsidized affordable housing requirements of the State Density Bonus law, some municipalities have unfortunately applied an equivalent affordable housing fee on state density bonus units which creates a disincentive and financial cost on those bonus units that make it exponentially more difficult to get projects to pencil. The fee itself can add millions to the overall cost of construction to a single project.”
- 10) **Arguments in Opposition.** The California Rural Legal Assistance Foundation writes in opposition, “As drafted, AB 2063 would undermine an existing local policy in San Francisco despite any evidence that the policy constrains either market-rate or affordable housing development. According to the Department of Housing and Community Development’s Housing Element Implementation and APR Dashboard, in the fifth housing element cycle so far, which in the Association of Bay Area Governments (ABAG) region runs January 31, 2015- January 31, 2023, San Francisco has already permitted 167.2% of its above moderate-income (i.e., market-rate) share of the regional housing need. In addition, it has permitted 43.4% of its very low-income RHNA share, 66% of its low-income share, and 43.4% of its moderate-income share. As a comparison, jurisdictions in the ABAG region as a whole have permitted 164.3% of the above moderate-income RHNA, 24.6% of the very low-income RHNA, 26.8% of the low-income RHNA, and 44.6% of the moderate-income RHNA.”

REGISTERED SUPPORT / OPPOSITION:

Support

Housing Action Coalition [SPONSOR]
 Bay Area Council
 California Apartment Association
 California Building Industry Association
 California Hispanic Chamber of Commerce
 California Yimby
 Circulate San Diego
 Civicwell
 East Bay Young Democrats
 Greenbelt Alliance
 Habitat for Humanity California
 Leadingage California
 Peninsula for Everyone
 People for Housing - Orange County
 San Francisco Bay Area Planning and Urban Research Association (SPUR)
 South California Rental Housing Association
 South Pasadena Residents for Responsible Growth
 The Two Hundred
 Yimby Action

Support if Amended

Livable California

Oppose

Build Affordable Faster CA
Catalysts for Local Control
Hills 2000- Friends of the Hills
Mission Street Neighbors
One Individual
Tri-valley Cities Coalition
Young Community Developers

Oppose Unless Amended.

California Rural Legal Assistance Foundation
Council of Community Housing Organizations, San Francisco
Episcopal Community Services of San Francisco
Homerise San Francisco
Mission Economic Development Agency (MEDA)
PODER
San Francisco Housing Development Corporation
Western Center on Law & Poverty

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