

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 571 (Mayes) – As Amended March 24, 2021

SUBJECT: Planning and zoning: density bonuses: affordable housing.

SUMMARY: Prohibits a local government from charging affordable housing impact fees on certain types of affordable units. **Specifically, this bill:**

- 1) Prohibits a local government from charging affordable housing impact fees, including inclusionary zoning fees, public benefit fees, and in-lieu fees on deed-restricted affordable units that are part of a project eligible for a density bonus under Density Bonus Law (DBL).
- 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; or,
 - 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; and,
 - 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; or,
 - 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; and,
 - 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.
- 4) Defines “concession or incentive” as:
- a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs;
 - b) Approval of mixed-use zoning in conjunction with the housing project, as specified; and,
 - c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing.

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 units that are intended for very low, low, and moderate income persons and families in density bonus projects. The bill specifies that affordable housing impact fees include inclusionary zoning fees, public benefit fees, and in-lieu fees.

This bill is sponsored by the California Association of Realtors and the Housing Action Coalition.

- 2) **Author's Statement.** According to the author, "The state's Density Bonus Law has been underutilized for decades. Housing affordability continues to suffer and will not resolve if the trend to 'kick the can down the road' persists. Impact and development fees significantly affect the overall cost of a project. These costs are often passed along to buyers in the form of higher home prices, especially in high demand markets. High impact and pre-development fees can also increase the amount of subsidy needed to build affordable housing units. It is time the state considers more concrete reductions in pre-development costs associated with the construction of affordable housing units in order to spur more development. AB 571 will prohibit imposing a housing affordability fee on deed restricted affordable units, as they are intended to be affordable to low, very low, and moderate-income families. It simply does not make sense to disincentive the construction of deed restricted affordable units within a density bonus application as we seek to encourage developers to make the maximum set aside possible within every application for a density bonus."
- 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; or,
- 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.** Cities charge fees on housing developments of various sizes to cover the impact of the housing development on the community. Local governments can adopt inclusionary ordinances that require a developer to include a percentage of affordable housing on site or pay an in lieu fee, which is used to fund affordable housing elsewhere in the community. This bill would prohibit a local government from charging fees through an inclusionary housing ordinance, in lieu fees, or public benefit fees on the affordable housing units in a development that uses density bonus.
- 5) **Public Benefit Fees.** A public benefit fee is a monetary contribution toward community improvements, such as bicycle paths, public parking, and open spaces.
- 6) **Committee Amendment.** The Committee may wish to consider the following amendment:

In order to clarify that the legislation only limits the application of fees that support affordable housing development, the Committee may wish to strike “public benefit fees” in subparagraph (D) of (ii)(6) from the definition of affordable housing impact fees.
- 7) **Arguments in Support.** The California Association of Realtors writes in support, “C.A.R. proudly supports AB 571, which seeks to create more units of naturally occurring affordable market rate housing, while also seeking to increase - and maximize - the number of deed restricted affordable units within density bonus applications. Creating more entry level market rate units, especially those for ownership housing, is the only way that communities of color will be able to bridge the state’s persistent wealth gap.”
- 8) **Arguments in Opposition.** Community Catalysts writes in opposition, “Density bonus laws don’t make sense and don’t meet the need for adequate housing that is affordable to low-income residents.”
- 9) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 8-0 vote on April 15, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors [SPONSOR]
Housing Action Coalition [SPONSOR]
American Planning Association, California Chapter
California Apartment Association
California Building Industry Association
Circulate San Diego
Livable California

Opposition

Community Catalysts
Individual - 1

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