

Date of Hearing: June 21, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 713 (Padilla) – As Amended April 17, 2023

SENATE VOTE: 33-0

SUBJECT: Planning and zoning: density bonuses: development standard.

SUMMARY: Specifies that for purposes of density bonus projects “development standards” means standards adopted by the local agency or enacted by the electorate exercising its local initiative or referendum power, whether that power is derived from the California Constitution, statute, or the charter or ordinances of the local agency.

EXISTING LAW:

- 1) Requires each city and county to prepare, adopt, and administer a general plan for its jurisdiction, which must include a housing element, to shape the future growth of its community (Government Code (GC) § 65300 – 65404).
- 2) Establishes Density Bonus Law (DBL), which 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 (GC § 65915).

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author’s Statement and Bill Summary.** According to the author, “California is in the midst of a housing crisis. Every step is vital as we work to bridge the gap between housing supply and demand. This measure would clearly articulate state law as developers and cities collaborate and seek to build new units of housing that are compliant with state law. SB 713 codifies a recent technical assistance memorandum from the Department of Housing and Community Development that explicitly re-states existing law, that local governments cannot impose standards that stop state density bonus projects from moving forward. This greater certainty allows developers to proceed with confidence to develop more housing, faster.”

This bill would clarify that a development standard – including a standard adopted by the electorate through local initiative or referendum power – is subject to the provisions of DBL.

This bill is sponsored by the San Diego Housing Federation.

- 2) **Density Bonus Projects.** DBL was originally enacted in 1979, to help address a shortage of affordable housing.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. DBL 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 local agency’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 agencies 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 agency from complying with DBL. Local agencies 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.

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 bonus a development can receive is 50 percent in exchange 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 concessions and incentives and parking reductions provided that they include the required amount of affordable housing.

- 3) **Local Housing Restrictions.** California has a long history of local voter initiatives focused on land use and housing. A 1987 research article in the *UCLA Journal of Environmental Law* documented a substantial increase in the number of local ballot measures impacting land-use and growth that qualified for the ballot in the 1970s and early 1980s. Researchers noted that while only ten local measures related to housing qualified for the ballot between 1971 and 1975, that number increased to 64 measures in the period from 1976 to 1982 and reached 53 measures in 1986 alone. Researchers found that growth control measures proposed during this period enjoyed high success rates (as high as 76 percent of all measures in 1986), while pro-growth measures faced more modest approval rates. Local growth control measures take various forms, and place direct as well as indirect controls on new development. For example:

- a) **City of San Mateo.** In 1991, San Mateo voters approved Measure H which amended the general plan to lower limits on building heights and residential density. In 2004, voters approved Measure P which extended the Measure H limitations through 2020 with limited modifications. In November of 2020, San Mateo voters extended the Measure P restrictions through December 31, 2030.

- b) **City of Monterey Park.** In 1982, Monterey Park voters approved Proposition L and Proposition K. Proposition L requires voter approval on certain zoning changes approved by the city. Proposition K, as approved, limited new residential construction to 100 units per year from 1983-1992. Note that both measures were litigated, see: *Lee v. City of Monterey Park*, 173 Cal. App. 3d 798.
- c) **City of Corte Madera.** In 1985, Corte Madera voters approved Measure G which placed a two year moratorium on new developments with exceptions for single family housing and small projects.
- 4) **San Diego Coastal Height Limit Overlay Zone and Density Bonus Law.** A developer sought to build a 100 percent affordable project (60 units) in the City of San Diego in a zone that, by a local voter initiative (San Diego Coastal Height Limit Overlay Zone), imposed a 30 foot height limit. The developer sought to utilize DBL and receive a height increase of up to an additional three stories, or 33 feet. The city and the developer asked HCD to provide technical assistance and answer whether Density Bonus Law preempts local voter initiatives, in this case the local height limit imposed. HCD responded in the affirmative – that state law preempts a local voter initiative.
- 5) **Development Standards for Density Bonus Projects.** Under DBL, a local agency may not apply a development standard (e.g. height restriction, floor area ratio, setback, or similar standard) that will have the effect of physically precluding the construction of a development permitted by state DBL. The author and sponsors point to several local voter initiatives across the state that impose height limits. These standards could frustrate the local agency’s ability to approve density bonus projects if DBL were not applicable standards adopted by voter initiatives.
- 6) **Arguments in Support.** The San Diego Housing Federation writes in support, “This legislation ensures that housing developments receive the full benefits of the law, even if there is conflict with local ordinances passed by voter initiative.”
- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 7-0 vote on June 7, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego Housing Federation [SPONSOR]
 Atlantis Group
 California Building Industry Association (CBIA)
 California Housing Partnership Corporation
 California Life Sciences
 California Yimby
 Circulate San Diego
 Community Housing Works
 East Bay Yimby
 Eden Housing

Grow the Richmond
Hitzke Development
How to Adu
Lvdsdca, LLC (iqhq, Inc.)
Maac Project
Mountain View Yimby
Napa-solano for Everyone
National Community Renaissance
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Diego Community Housing Corporation
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Urban Environmentalists
Ventura County Yimby
Wakeland Housing and Development Corporation
Yimby Action

Opposition

None on file.

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