COUNTY OF SANTA BARBARA
LEGISLATIVE ANALYSIS FORM

This form is required for the Legislative Program Committee to consider taking an advocacy position on an issue or legislative item.

<table>
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<tr>
<th>BILL NUMBER:</th>
<th>AUTHOR:</th>
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<td>AB 2501</td>
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<tr>
<th>INTRO/AMEND DATE:</th>
<th>AUTHOR’S POLITICAL PARTY:</th>
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<tr>
<td>February 19, 2016</td>
<td>Democrat</td>
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<th>BILL STATUS:</th>
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<td>Asm Appropriations</td>
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1) BILL SUBJECT: Density Bonus Law

2) FROM DEPARTMENT: Planning & Development

3) IS THIS ITEM SPECIFICALLY REFERENCED IN THE LEGISLATIVE PLATFORM? No

4) WHICH POLICY-RELATED MATTER IS OF CONCERN WITH THIS BILL?
This bill is a significant overhaul of density bonus law. It would further reduce local control on housing projects by restricting information that local jurisdictions can request from developers and imposing arbitrary and shorter timelines for the review and approval of density bonus applications.

5) HOW WOULD THIS BILL IMPACT THE COUNTY? (Current practices, responsibility, authority, pros/cons, affected programs and/or services, etc.)
This bill would reduce the authority that the County has to review density bonus applications. In terms of local control, the current density bonus law is onerous. This would make it worse.

6) IMPACT ON COUNTY PROGRAM:

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<th>Major</th>
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<th>SANTA BARBARA COUNTY IMPACT:</th>
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<th>STATEWIDE IMPACT:</th>
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Explanation of Impacts:
It would take away County authority to determine where and how much affordable housing should be built and what it looks like. Currently a developer can demand a number of concessions from things like zoning standards, but the local jurisdiction can ask for information as to why the concessions are necessary to make the affordable housing economically feasible. This bill would restrict the ability of a local jurisdiction to ask such questions, which would probably result in concessions being requested that have nothing to do with the affordable housing, but instead simply increase profit on the project.

7) WOULD THIS BILL IMPACT:
   a. Efficient service delivery and operations? □ YES □ NO
   b. Fiscal stability? □ YES □ NO
   c. Inter-agency cooperation? □ YES □ NO
   d. Local control? □ YES □ NO
   e. Protection of safety net services? □ YES □ NO
   f. Community sustainability/economic stability? □ YES □ NO
COUNTY OF SANTA BARBARA

LEGISLATIVE ANALYSIS FORM

Additional Comments:

8) FISCAL IMPACT ON THE COUNTY:

- [ ] Revenue Increase
- [ ] Revenue Decrease
- [ ] Cost Increase
- [ ] Cost Decrease
- [ ] Unfunded Mandate
- [ ] Undetermined
- [ ] None

Additional Comments:
Possible revenue increase from increased property taxes.

9) OTHER AGENCIES THAT SHOULD REVIEW THIS BILL:

Please list other agencies below:

10) CSAC POSITION ON BILL:

- [ ] Support
- [ ] Oppose
- [ ] Support if Amended
- [ ] Oppose unless Amended
- [ ] Watch
- [ ] No position taken

11) OTHER LOCAL OR STATEWIDE ORGANIZATIONS THAT HAVE TAKEN A POSITION ON THIS BILL:

(Indicate support or opposition for each)

12) PROPOSED AMENDMENTS: (Attach separate sheet)

13) RECOMMENDATION:

- [ ] Active Support*
- [ ] Passive Support
- [ ] Support if Amended*
- [ ] Active Opposition*
- [ ] Passive Opposition
- [ ] Oppose unless Amended*
- [ ] Watch
- [ ] Concerns (Why? Explain in #6)
- [ ] No Position (Why?)
- [ ] No Change since Last Position

* Indicates that the department believes that the Board of Supervisors should take a formal position on this bill

Additional Comments:
AS part of our in lieu housing ordinance, we have developed density bonus standards appropriate for the County and approved by the BOS. This would take more of that authority away from the County than the current density bonus law already does

14) LEGISLATIVE ANALYSIS FORM PREPARED BY: Glenn Russell

Telephone extension: 2085

E-mail address: grussell@co.santa-barbara.ca.us
Subject: Housing: density bonuses.

Summary: Makes a number of changes to density bonus law. Specifically, this bill:

1) Clarifies that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within the jurisdiction of a city or county, that local government shall provide the applicant with waiver and reduction of development standards for the production of housing units and child care facilities, in addition to incentives or concessions, as currently provided in density bonus law.

2) Prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law.

3) Requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following:
   a) Adopt procedures and timelines for processing a density bonus application;
   b) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete, consistent with density bonus law; and,
   c) Notify the applicant for a density bonus whether the application is complete in a manner that is consistent with the Permit Streamlining Act (Act).

4) Modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not reduce the cost of the development" rather than when it "is not required in order" to provide for the affordable housing costs.

5) Provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.

6) Provides that denial of a requested concession or incentive will be deemed to have exhausted the applicant's existing administrative remedies.

7) Clarifies that "density bonus" means the maximum allowable gross residential density.

8) Clarifies that a developer that makes an application for a density bonus may elect to accept no increase in the density of a project.

9) Clarifies that the definition of "density bonus" includes any incentive or concessions, or waiver or reduction of development standard, provided to the applicant for the production of housing units and child care facilities.
10) Adds "mixed use development" to the definition of "housing development." Mixed use development means developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to neighborhood commercial use and to the first floor of the buildings that are two or more stories. Neighborhood commercial means small scale-general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

11) Provides that the granting of a concession or incentive cannot, in and of its self, require a special study.

12) Deletes the requirement that incentives or concessions proposed by a developer or local government result in "identifiable, financially sufficient" and actual cost reductions, and instead, require the "identifiable" and actual cost reductions.

13) Clarifies that each component of any density bonus calculation, including base density and bonus density, resulting in fractional units will be separately rounded up to the next whole number. Finds and declares that this provision is declaratory of existing law.

14) Provides that the density bonus law shall be interpreted liberally in favor of producing the maximum number of total housing units.

15) Provides that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

2) Requires cities and counties to 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) 10% of the total units for lower-income households;
   b) 5% of the total units of a housing for very low-income households;
   c) A senior citizen housing development or mobilehome park; and,
   d) 10% of the units in a common-interest development (CID) for moderate-income households.

3) Requires that the applicant agree to, and the city or county ensure, continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.

4) Requires that the applicant agree to, and the city or county ensure, that the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in a
Common Interest Development (CID) are moderate income and that the units are offered at a cost affordable to moderate-income households.

5) Requires the local government to enforce an equity-sharing agreement upon the resale of any moderate-income units that qualified a housing development for a density bonus.

6) Allows, upon sale of the unit, the seller to keep the value of any improvements, the down payment, and the seller's proportionate share of appreciation.

7) Provides that the local government shall recapture its proportionate share of appreciation, which shall be used within three years for promotion of affordable homeownership.

8) Requires the city or county to allow an increase in density of 20% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for low-income, very low-income, or senior housing, and by 5% for moderate-income housing in a CID.

9) Requires that the density bonus for low-, very low-, and moderate-income units increase incrementally according to the following formula:

   a) For each 1% increase above 10% for low-income units, the density bonus shall increase by 1.5% to a maximum of 35%;
   b) For each 1% increase above 5% for very low-income units, the density bonus shall increase by 2.5% to a maximum of 35%; and,
   c) For each 1% increase above 10% for moderate-income units, the density bonus shall increase by 1% to a maximum of 35%.

10) Requires cities and counties to provide an applicant for a density bonus concessions and incentives based on the number of below market-rate units included in the project as follows:

   a) One incentive or concession, if the project includes at least 10% of the total units for low-income households, 5% for very low-income households, or 10% for moderate-income households in a CID;
   b) Two incentives or concessions, if the project includes at least 20% of the total units for low-income households, 10% for very low-income households, or 20% for moderate-income households in a CID; and,
   c) Three incentives or concessions, if the project includes at least 30% of the total units for low-income households, 15% for very low-income households, or 30% for moderate-income households in a CID.

11) Specifies that concessions or incentives may include the following:

   a) A reduction in site development standards;
   b) A modification of zoning code requirements or architectural design requirements that exceed the minimum building standards, including a reduction in setbacks, square
footage requirements, or parking requirements, that results in identifiable, financially
sufficient, and actual cost reductions;

c) Approval of mixed-use zoning in conjunction with the housing project, if commercial,
office, industrial, or other land uses will reduce the cost of the housing development, and,
if such nonresidential uses are compatible with the project; or,

d) Other regulatory incentives or concessions proposed by the developer or the city or
county that result in identifiable cost reductions.

12) Requires the local government to grant the incentive or concession requested by the
developer, unless the city or county makes written findings that:

a) The concession or incentive is not needed to provide the affordable housing; or,

b) That the concession or incentive would have a specific adverse impact on health and
safety, the environment, or an historical resource.

13) Prohibits a city or county from applying any development standard that will have the effect
of precluding the construction of housing that qualifies for a density bonus at the densities or
with the concessions or incentives required by density bonus law.

14) Allows a developer to request a waiver or reduction of development standards.

15) Specifies that the developer must show that the requested waiver or modification of
development standards is necessary to make the housing units economically feasible.

16) Defines "development standard" to include site and construction conditions that apply to
a residential development, pursuant to any ordinance, general plan element, specific plan,
charter amendment, or other local condition, law, policy, resolution, or regulation.

17) Requires a city or county to grant either an additional density bonus or an additional
concession or incentive, when the applicant proposes to include a child care facility in or
adjacent to the housing development.

18) Provides a 15% density bonus to the developer of any market-rate housing project who
donates land to a city or county that could accommodate housing for very low-income
households equal to at least 10% of the number of units in the market-rate development.
For each 1% increase above the 10%, the density bonus shall increase by 1% up to a
maximum combined density increase of 35%.

19) Provides that to be eligible for the land donation density bonus, all of the following
conditions must be met:

a) The applicant must donate and transfer the land no later than the approval of the final
subdivision map, parcel map or development application;

b) The land being donated is suitable to accommodate units affordable to very-low income
households in an amount not less than 10% of the number of residential units of the
proposed development;
c) The transferred land is at least one acre or can accommodate 40 units, has the appropriate general plan designation, is appropriately zoned for affordable housing, can be served by infrastructure, and the land has all the necessary permits and approvals;

d) The land is subject to deed restrictions ensuring continued affordability;

e) The land is donated to the local agency or to a housing developer approved by the local agency; and,

f) The transferred land is either within the boundary of or, if the local agency agrees, within 1/4 mile of the proposed development.

20) 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):

a) Zero to one bedrooms: one onsite parking space;

b) Two to three bedrooms: two onsite parking spaces; and,

c) Four or more bedrooms: two and one-half parking spaces.

21) Clarifies that local governments may still grant density bonuses greater than what is provided under state law, or lower for developments that do not meet the requirements of state law.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

1) **Bill Summary.** This bill makes a number of changes to density bonus law. The bill clarifies that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within the jurisdiction of a city or county, that local government shall provide the applicant with waiver and reduction of development standards for the production of housing units and child care facilities, in addition to incentives or concessions, as provided currently in density bonus law. The bill also prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law. The bill requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following: a) Adopt procedures and timelines for processing a density bonus application; b) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete, consistent with density bonus law; and, c) Notify the applicant for a density bonus whether the application is complete in a manner that is consistent with the Permit Streamlining Act (Act).

Additionally, the bill modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not reduce the cost of the development" rather than when it "is not required in order" to provide for the affordable housing costs, and provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.
This bill is sponsored by the Western Center on Law and Poverty and the California Rural Legal Assistance Foundation.

2) **Author’s Statement.** According to the author, “California remains one of the most expensive housing markets in the United States. Through the loss of redevelopment agencies and reductions in state and federal housing funding, fewer resources are available to address this need. One tool for increasing affordable housing production is through regulatory incentives that reduce barriers to the production of affordable housing and encourage market-based solutions. State Density Bonus law (Government Code Sections 65915 – 65918) provides concessions and incentives to housing developers who agree to make a percentage of the units in their development affordable to low- and moderate-income households. However, the law has a number of ambiguous provisions that discourage developers from utilizing it, or are used by local governments to prevent developers from accessing the law.

“Developers and local governments need certainty in order for Density Bonus law to be an effective incentive to produce affordable housing. Right now that certainty is lacking. AB 2501 would strengthen state Density Bonus law to help encourage market rate developers to include affordable units within residential developments, and reduce costs for affordable housing developers. AB 2501 would address a number of these ambiguous provisions and strengthen the incentives.”

3) **Background.** Density bonus law was originally enacted in 1979, but has been changed numerous times since. The Legislature enacted the density bonus law to help address the affordable housing shortage and to encourage development of more low- and moderate-income housing units. Nearly forty years later, the Legislature faces the same 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% affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city’s zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units. Because of numerous amendments over the years, state density bonus law is confusing and subject to interpretation by both developers and cities as to its meaning.

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 city’s 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) 10% of the total units for lower-income households;

b) 5% of the total units of a housing for very low-income households;

c) A senior citizen housing development or mobilehome park; and,

d) 10% of the units in a common-interest development (CID) for moderate-income households.
A developer can submit a request to a local government as part of their density bonus application for incentives and concessions. Developers can receive the following number of incentives or concessions:

a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for moderate-income households in a common interest development.

b) Two incentives or concessions for projects with at least 20% lower-income households, at least 10% for very low-income households, or at least 20% for moderate-income households in common interest developments.

c) Three incentives or concessions for projects with at least 30% lower-income households, at least 15% for very low-income households, or at least 30% for moderate-income households in common interest developments.

4) Arguments in Support. According to the sponsors, Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, "AB 2501 is one piece of a multi-pronged effort by legislators, housing advocates, and other organizations to address California’s unfortunate dominance of the list of the country’s least-affordable housing markets. By reducing regulatory barriers to housing development, this bill would stretch any increase in state housing funding further and would induce market-rate developers to build below-market units without any public funding."

5) Arguments in Opposition. Opponents argue that this bill contains provisions that would limit the ability of a city to interpret its own development standards, diminish the role of planning commissions and impose unrealistic timeframes.

6) Double-Referral. This bill was heard by the Housing and Community Development Committee on April 13, 2016, where it passed with a 5-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation [SPONSOR]
Western Center on Law and Poverty [SPONSOR]
California Apartment Association
California Association of Realtors
California Housing Consortium

Opposition

California State Association of Counties
Cities of Fontana and Torrance (based on 4/5/2016 version)
League of California Cities (based on 4/5/2016 version)

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958
An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 2501, as amended, Bloom. Housing: density bonuses.

Existing law, the Planning and Zoning Law, requires, when an applicant proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer 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, among other things, agrees to construct a specified percentage of units for very low-, low-, or moderate-income households or qualifying residents. Existing law requires continued affordability for 55 years or longer, as specified, of all very low and low-income units that qualified an applicant for a density bonus. Existing law requires a city, county, or city and county to adopt an ordinance to implement these requirements and to establish procedures to carry them out.

This bill would require the ordinance to include local government to adopt procedures and timelines for processing a density bonus application, as specified, as well as provide a list of documents and
information required to be submitted with the application in order for it to be deemed complete. By increasing the duties of local officials, this bill would impose a state-mandated local program. The bill would prohibit a local government from requiring additional reports or studies to be prepared by the developer as a condition of the application. The bill would additionally require each component of any density calculation that results in fractional units to be rounded up to the next whole number, and would provide that this provision is declaratory of existing law.

Existing law defines the term “density bonus” for these purposes to mean a density increase over the otherwise maximum allowable residential density as of the date of the application and provides that the applicant may elect to accept a lesser percentage of density bonus.

This bill would specify that the term “density bonus” means a density increase over the maximum allowable gross residential density at the time of the date of the application, and would provide that an applicant may elect to accept no density bonus. The bill would additionally provide that the term “density bonus” includes any incentive or concession, or waiver or reduction of development standard, provided to the applicant for the production of housing units and child care facilities, as provided.

Existing law requires a local government to provide the applicant for a density bonus with incentives or concessions for the production of housing units and child care facilities, as specified.

The bill would additionally require the local government to provide the applicant with a waiver or reduction of development standards, as specified.

Existing law requires a local government to grant a proposal for specific incentives or concessions requested by an applicant unless the local government makes written findings, based on substantial evidence, that, among other things, the concession or incentive is not required in order to provide affordable housing costs or for rents for the targeted units, as specified.

This bill would, instead, provide that the local government is required to provide the requested concessions or incentives unless it finds, based on substantial evidence, that the concession or incentive does not reduce the cost of development to provide for affordable housing costs or rents for the targeted units.
Existing law defines the term “housing development” for these purposes to mean a development project for five or more residential units.

This bill would expand that definition to include mixed-use housing, as specified.

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.


The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives, concessions, or waiver and reduction of development standards for the production of housing units and child care facilities as prescribed in this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section. The local government shall not require public notice or hold a public hearing on the application. Acting on the application shall be considered a ministerial act.

(2) A local government shall not condition the submission, review, or approval of an application for a density bonus pursuant to this chapter on the preparation of an additional report or study that is not otherwise described in this section.

(3) In order to provide for the expeditious processing of a density bonus application, the ordinance required pursuant to this subdivision local government shall include do all of the following:

(A) Procedures: Adopt procedures and timelines for processing a density bonus application.
(B) A list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) A procedure to notify the applicant within 30 days of receipt of the application that for a density bonus whether the application is complete or that an additional item is required to complete the application. If an additional item is required, it shall be identified in this notice. If the local government does not provide this notice within 30 days, then the application shall be deemed complete: complete in a manner consistent with Section 65943.

(D) A procedure to make a final determination on the density bonus application no later than 60 days from the date when the density bonus application is deemed complete. If the local government does not make a final determination within this time, the density bonus application shall be deemed approved.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

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

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

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

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

(3) For the purposes of this section, “total units” or “total
dwelling units” does not include units added by a density bonus
awarded pursuant to this section or any local law granting a greater
density bonus.

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

Rents for the lower income density bonus units shall be set at an
affordable rent as defined in Section 50053 of the Health and Safety
Code.

(2) An applicant shall agree to, and the city, county, or city and
county shall ensure that, the initial occupant of all for-sale units
that qualified the applicant for the award of the density bonus are
persons and families of very low, low, or moderate income, as
required, and that the units are offered at an affordable housing
cost, as that cost is defined in Section 50052.5 of the Health and
Safety Code. The local government shall enforce an equity sharing
agreement, unless it is in conflict with the requirements of another
public funding source or law. The following apply to the equity
sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of
any improvements, the downpayment, and the seller’s proportionate
share of appreciation. The local government shall recapture any
initial subsidy, as defined in subparagraph (B), and its proportionate
share of appreciation, as defined in subparagraph (C), which
amount shall be used within five years for any of the purposes
described in subdivision (e) of Section 33334.2 of the Health and
Safety Code that promote home ownership.

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

(C) For purposes of this subdivision, the local government’s
proportionate share of appreciation shall be equal to the ratio of
the local government’s initial subsidy to the fair market value of
the home at the time of initial sale.

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

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

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

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

(i) If any dwelling units described in subparagraph (A) are
occupied on the date of application, the proposed housing
development shall provide at least the same number of units of
equivalent size or type, or both, to be made available at affordable
rent or affordable housing cost to, and occupied by, persons and
families in the same or lower income category as those households
in occupancy. For unoccupied dwelling units described in
subparagraph (A) in a development with occupied units, the
proposed housing development shall provide units of equivalent
size or type, or both, to be made available at affordable rent or
affordable housing cost to, and occupied by, persons and families
in the same or lower income category in the same proportion of
affordability as the occupied units. All replacement calculations
resulting in fractional units shall be rounded up to the next whole
number. If the replacement units will be rental dwelling units,
these units shall be subject to a recorded affordability restriction
for at least 55 years. If the proposed development is for-sale units,
the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have
been vacated or demolished within the five-year period preceding
the application, the proposed housing development shall provide
at least the same number of units of equivalent size or type, or
both, as existed at the highpoint of those units in the five-year
period preceding the application to be made available at affordable
rent or affordable housing cost to, and occupied by, persons and
families in the same or lower income category as those persons
and families in occupancy at that time, if known. If the incomes
of the persons and families in occupancy at the highpoint is not
known, then one-half of the required units shall be made available
at affordable rent or affordable housing cost to, and occupied by,
very low income persons and families and one-half of the required
units shall be made available for rent at affordable housing costs
to, and occupied by, low-income persons and families. All
replacement calculations resulting in fractional units shall be
rounded up to the next whole number. If the replacement units will
be rental dwelling units, these units shall be subject to a recorded
affordability restriction for at least 55 years. If the proposed
development is for-sale units, the units replaced shall be subject
to paragraph (2).

(C) Paragraph (3) of subdivision (c) does not apply to an
applicant seeking a density bonus for a proposed housing
development if his or her application was submitted to, or
processed by, a city, county, or city and county before January 1,
2015.

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

(A) The concession or incentive does not reduce the cost of
development to provide for affordable housing costs, as defined
in Section 50052.5 of the Health and Safety Code, or for rents for
the targeted units to be set as specified in subdivision (c).

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

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

(2) The applicant shall 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 persons and families of moderate income in a common interest
development.

(B) Two incentives or concessions for projects that include at
least 20 percent of the total units for lower income households, at
least 10 percent for very low income households, or at least 20
percent for persons and families of moderate income in a common
interest development.

(C) Three incentives or concessions for projects that include at
least 30 percent of the total units for lower income households, at
least 15 percent for very low income households, or at least 30
percent for persons and families of moderate income in a common
interest development.

(3) The applicant may initiate judicial proceedings if the city,
county, or city and county refuses to grant a requested density
bonus, incentive, or concession. If a court finds that the refusal to
grant a requested density bonus, incentive, or concession is in
violation of this section, the court shall award the plaintiff
reasonable attorney’s fees and costs of suit. Nothing in this
subdivision shall be interpreted to require a local government to
grant an incentive or concession that has a specific, adverse impact,
as defined in paragraph (2) of subdivision (d) of Section 65589.5,
upon health, safety, or the physical environment, and for which
there is no feasible method to satisfactorily mitigate or avoid the
specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive. Denial of a requested concession or incentive shall be deemed to have exhausted an applicant’s administrative remedies for purposes of paragraph (3) of subdivision (d) or subdivision (e).

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

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

(f) (1) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus, including, but not limited to, no increase in density. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

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

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<tr>
<th>Percentage Low-Income Units</th>
<th>Percentage Density Bonus</th>
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(B) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<tr>
<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
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(C) 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.

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

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<th>Percentage Moderate-Income Units</th>
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(E) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(2) The term “density bonus” shall also include any incentive or concession, or waiver or reduction of development standard, provided to the applicant for the production of housing units and child care facilities, as provided in this section.

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

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<th>Percentage Very Low Income</th>
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(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

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

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

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

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

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.
(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

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

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

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

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

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

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

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

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

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

(4) “Child care facility,” as used in this section, means a child
day care facility other than a family day care home, including, but
not limited to, infant centers, preschools, extended day care
facilities, and schoolage child care centers.

(i) “Housing development,” as used in this section, means a
development project for five or more residential units, including
mixed-use developments as defined in Section 65950. For the
purposes of this section, “housing development” also includes a
subdivision or common interest development, as defined in Section
4100 of the Civil Code, approved by a city, county, or city and
county and consists of residential units or unimproved residential
lots and either a project to substantially rehabilitate and convert
an existing commercial building to residential use or the substantial
rehabilitation of an existing multifamily dwelling, as defined in
subdivision (d) of Section 65863.4, where the result of the
rehabilitation would be a net increase in available residential units.

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

(j) (1) The granting of a concession or incentive shall not require
or be interpreted, in and of itself, to require a general plan
amendment, local coastal plan amendment, zoning change, special
studies, or other discretionary approval. This provision is
declaratory of existing law.

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

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

(1) A reduction in site development standards or a modification
of zoning code requirements or architectural design requirements
that exceed the minimum building standards approved by the
California Building Standards Commission as provided in Part 2.5
(commencing with Section 18901) of Division 13 of the Health
and Safety Code, 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, as determined by the developer.

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

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions, as determined by the developer. In no case shall this include an increase in density above the percentages specified in subdivision (f).

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

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).

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

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

(1) “Development standard” includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.
“Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Except as provided in paragraphs (2) and (3), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

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

(B) Two to three bedrooms: two onsite parking spaces.

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

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low- or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the
major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

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

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

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low- and very low income individuals, including seniors and special needs
individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

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

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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIIB 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 act, within the meaning of Section 17556 of the Government Code.