

Bill Summaries

AB 215: Housing element: regional housing need: relative progress determination

Summary

- Requires jurisdictions with relatively low progress towards meeting their regional housing needs to have a mid-cycle housing element consultation with the Department of Housing and Community Development (HCD) and adopt pro-housing policies
- These conditions apply if:
 - A City's progress towards meeting its share of the regional housing need is less than its pro-rated share of the regional housing need; and
 - Either its relative progress for all housing or housing affordable to very low- and low-income housing is less than that of the jurisdiction's affiliated council of governments or subregion.
- Should the above conditions apply, requires jurisdictions to attain a pro-housing designation from HCD as follows:
 - A jurisdiction would be required to undertake the consultation if its relative progress for all housing is at least 10 percentage points less than that of the jurisdiction's affiliated council of governments or subregion, as determined during the fifth year of the housing element planning period and upon completion of the housing element planning period.
 - The timing and process for attaining the pro-housing designation is as follows:
 - HCD must notify jurisdictions by July 1 of their need to attain the pro-housing designation;
 - Any jurisdiction receiving this notice must attain the pro-housing designation from HCD by July 1 of the following year.
 - If a jurisdiction does not comply with the timeline for receiving the pro-housing designation, HCD must find that their housing element does not substantially comply with Housing Element law.

Support

California Housing Consortium [SPONSOR]
Bay Area Council
Bridge Housing Corporation
Calchamber
California Association of Realtors
California Yimby
California Building Industry Association
Chan Zuckerberg Initiative
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
Housing Action Coalition

Lisc San Diego
Midpen Housing
Modular Building Institute
Non-profit Housing Association of Northern California
Sand Hill Property Company
Silicon Valley Community Foundation
Silicon Valley Leadership Group
Spur
Sv@home
Sv@home Action Fund
The Two Hundred

AMENDED IN SENATE JUNE 23, 2021

AMENDED IN ASSEMBLY APRIL 5, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 215

Introduced by Assembly Member Chiu

January 11, 2021

An act to amend Section 65585 of, and to add Sections 65585.5 and 65589.10 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 215, as amended, Chiu. Housing element: regional housing need: relative progress determination.

(1) Existing law, the Planning and Zoning Law, requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the Department of Housing and Community Development to determine whether the housing element is in substantial compliance with specified provisions of that law.

This bill, starting with the 6th housing element revision, would require the department to determine the relative progress toward meeting regional housing needs of each jurisdiction, council of governments, and subregion, as specified. The bill would require the department to make this determination based on the information contained in the annual reports submitted by each jurisdiction, as specified. The bill would require the department to make this determination for all housing and for lower income housing by dividing the applicable entity's progress toward meeting its share of the regional housing need by its prorated share of the regional housing need, as specified. The bill would

require the department to post the determinations of relative progress on its internet website by July 1 of the year in which relative progress is determined.

The bill would require a jurisdiction to undertake a midcycle housing element consultation with the department if the jurisdiction's progress toward meeting its share of the regional housing need is less than its prorated share of the regional housing need and the relative progress of the jurisdiction for all housing or for lower income housing is less than the relative progress of the affiliated council of governments or subregion, as specified. The bill would require ~~a jurisdiction to undertake specified actions, jurisdiction,~~ in consultation with the department, as a part of this midcycle housing element consultation, ~~including a review and update of the jurisdiction's goals, policies, quantified objectives, financial resources, and scheduled programs.~~ *to review and update its scheduled programs and ensure that all programs have enforceable actions and concrete timelines.* The bill would require the department to find that a housing element is not in substantial compliance with the Planning and Zoning Law if the department determines that the jurisdiction has not complied with these provisions.

Because this bill would require certain jurisdictions to participate in a midcycle housing element consultation with the department, the bill imposes a state-mandated local program.

(2) Existing law, for award cycles commencing after July 1, 2021, awards a city or county additional points in the scoring of specified program applications if the city or county, among other things, has been designated by the department as prohousing based upon its adoption of prohousing local policies for housing, as provided. Existing law defines "prohousing local policies" as policies that facilitate the planning, approval, or construction of housing, including, but not limited to, local financial incentives for housing, reduced parking requirements for sites that are zoned for residential development, and the adoption of zoning allowing for use by right for residential and mixed-use development.

This bill, commencing with the 6th revision of the housing element, would require a jurisdiction to attain a prohousing designation by the department if the jurisdiction's relative progress toward meeting its share of the regional or subregional housing need for all housing is at least 10 percentage points less than the relative progress of their affiliated council of governments or subregion, as determined pursuant to the provisions described above, as specified.

(3) The Planning and Zoning Law also requires the department to notify a city, county, or city and county, and authorizes the department to notify the office of the Attorney General, that the city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to the housing element does not substantially comply with specified provisions of the Planning and Zoning Law, or that the local government has taken action or failed to act in violation of specified provisions of law.

This bill would add the Housing Crisis Act of 2019 to those specified provisions of law.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 65585 of the Government Code is
2 amended to read:

3 65585. (a) In the preparation of its housing element, each city
4 and county shall consider the guidelines adopted by the department
5 pursuant to Section 50459 of the Health and Safety Code. Those
6 guidelines shall be advisory to each city or county in the
7 preparation of its housing element.

8 (b) (1) At least 90 days prior to adoption of its housing element,
9 or at least 60 days prior to the adoption of an amendment to this
10 element, the planning agency shall submit a draft element or draft
11 amendment to the department.

12 (2) The planning agency staff shall collect and compile the
13 public comments regarding the housing element received by the
14 city, county, or city and county, and provide these comments to
15 each member of the legislative body before it adopts the housing
16 element.

17 (3) The department shall review the draft and report its written
18 findings to the planning agency within 90 days of its receipt of the
19 draft in the case of an adoption or within 60 days of its receipt in
20 the case of a draft amendment.

1 (c) In the preparation of its findings, the department may consult
2 with any public agency, group, or person. The department shall
3 receive and consider any written comments from any public
4 agency, group, or person regarding the draft or adopted element
5 or amendment under review.

6 (d) In its written findings, the department shall determine
7 whether the draft element or draft amendment substantially
8 complies with this article.

9 (e) Prior to the adoption of its draft element or draft amendment,
10 the legislative body shall consider the findings made by the
11 department. If the department's findings are not available within
12 the time limits set by this section, the legislative body may act
13 without them.

14 (f) If the department finds that the draft element or draft
15 amendment does not substantially comply with this article, the
16 legislative body shall take one of the following actions:

17 (1) Change the draft element or draft amendment to substantially
18 comply with this article.

19 (2) Adopt the draft element or draft amendment without changes.
20 The legislative body shall include in its resolution of adoption
21 written findings which explain the reasons the legislative body
22 believes that the draft element or draft amendment substantially
23 complies with this article despite the findings of the department.

24 (g) Promptly following the adoption of its element or
25 amendment, the planning agency shall submit a copy to the
26 department.

27 (h) The department shall, within 90 days, review adopted
28 housing elements or amendments and report its findings to the
29 planning agency.

30 (i) (1) (A) The department shall review any action or failure
31 to act by the city, county, or city and county that it determines is
32 inconsistent with an adopted housing element or Section 65583,
33 including any failure to implement any program actions included
34 in the housing element pursuant to Section 65583. The department
35 shall issue written findings to the city, county, or city and county
36 as to whether the action or failure to act substantially complies
37 with this article, and provide a reasonable time no longer than 30
38 days for the city, county, or city and county to respond to the
39 findings before taking any other action authorized by this section,
40 including the action authorized by subparagraph (B).

1 (B) If the department finds that the action or failure to act by
2 the city, county, or city and county does not substantially comply
3 with this article, and if it has issued findings pursuant to this section
4 that an amendment to the housing element substantially complies
5 with this article, the department may revoke its findings until it
6 determines that the city, county, or city and county has come into
7 compliance with this article.

8 (2) The department may consult with any local government,
9 public agency, group, or person, and shall receive and consider
10 any written comments from any public agency, group, or person,
11 regarding the action or failure to act by the city, county, or city
12 and county described in paragraph (1), in determining whether the
13 housing element substantially complies with this article.

14 (j) The department shall notify the city, county, or city and
15 county and may notify the office of the Attorney General that the
16 city, county, or city and county is in violation of state law if the
17 department finds that the housing element or an amendment to this
18 element, or any action or failure to act described in subdivision
19 (i), does not substantially comply with this article or that any local
20 government has taken an action in violation of the following:

21 (1) Housing Accountability Act (Section 65589.5 of the
22 Government Code).

23 (2) Section 65863 of the Government Code.

24 (3) Chapter 4.3 (commencing with Section 65915) of Division
25 1 of Title 7 of the Government Code.

26 (4) Section 65008 of the Government Code.

27 (5) Housing Crisis Act of 2019 (Section 66300 of the
28 Government Code).

29 (k) Commencing July 1, 2019, prior to the Attorney General
30 bringing any suit for a violation of the provisions identified in
31 subdivision (j) related to housing element compliance and seeking
32 remedies available pursuant to this subdivision, the department
33 shall offer the jurisdiction the opportunity for two meetings in
34 person or via telephone to discuss the violation, and shall provide
35 the jurisdiction written findings regarding the violation. This
36 paragraph does not affect any action filed prior to the effective
37 date of this section. The requirements set forth in this subdivision
38 do not apply to any suits brought for a violation or violations of
39 paragraphs (1), (3), and (4) of subdivision (j).

(l) In any action or special proceeding brought by the Attorney General relating to housing element compliance pursuant to a notice or referral under subdivision (j), the Attorney General may request, upon a finding of the court that the housing element does not substantially comply with the requirements of this article pursuant to this section, that the court issue an order or judgment directing the jurisdiction to bring its housing element into substantial compliance with the requirements of this article. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If a court determines that the housing element of the jurisdiction substantially complies with this article, it shall have the same force and effect, for purposes of eligibility for any financial assistance that requires a housing element in substantial compliance and for purposes of any incentives provided under Section 65589.9, as a determination by the department that the housing element substantially complies with this article.

(1) If the jurisdiction has not complied with the order or judgment after twelve months, the court shall conduct a status conference. Following the status conference, upon a determination that the jurisdiction failed to comply with the order or judgment compelling substantial compliance with the requirements of this article, the court shall impose fines on the jurisdiction, which shall be deposited into the Building Homes and Jobs Trust Fund. Any fine levied pursuant to this paragraph shall be in a minimum amount of ten thousand dollars (\$10,000) per month, but shall not exceed one hundred thousand dollars (\$100,000) per month, except as provided in paragraphs (2) and (3). In the event that the jurisdiction fails to pay fines imposed by the court in full and on time, the court may require the Controller to intercept any available state and local funds and direct such funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay. The intercept of the funds by the Controller for this purpose shall not violate any provision of the California Constitution.

(2) If the jurisdiction has not complied with the order or judgment after three months following the imposition of fees described in paragraph (1), the court shall conduct a status conference. Following the status conference, if the court finds that the fees imposed pursuant to paragraph (1) are insufficient to bring the jurisdiction into compliance with the order or judgment, the court may multiply the fine determined pursuant to paragraph (1)

1 by a factor of three. In the event that the jurisdiction fails to pay
2 fines imposed by the court in full and on time, the court may
3 require the Controller to intercept any available state and local
4 funds and direct such funds to the Building Homes and Jobs Trust
5 Fund to correct the jurisdiction's failure to pay. The intercept of
6 the funds by the Controller for this purpose shall not violate any
7 provision of the California Constitution.

8 (3) If the jurisdiction has not complied with the order or
9 judgment six months following the imposition of fees described
10 in paragraph (1), the court shall conduct a status conference. Upon
11 a determination that the jurisdiction failed to comply with the order
12 or judgment, the court may impose the following:

13 (A) If the court finds that the fees imposed pursuant to
14 paragraphs (1) and (2) are insufficient to bring the jurisdiction into
15 compliance with the order or judgment, the court may multiply
16 the fine determined pursuant to paragraph (1) by a factor of six.
17 In the event that the jurisdiction fails to pay fines imposed by the
18 court in full and on time, the court may require the Controller to
19 intercept any available state and local funds and direct such funds
20 to the Building Homes and Jobs Trust Fund to correct the
21 jurisdiction's failure to pay. The intercept of the funds by the
22 Controller for this purpose shall not violate any provision of the
23 California Constitution.

24 (B) The court may order remedies available pursuant to Section
25 564 of the Code of Civil Procedure, under which the agent of the
26 court may take all governmental actions necessary to bring the
27 jurisdiction's housing element into substantial compliance pursuant
28 to this article in order to remedy identified deficiencies. The court
29 shall determine whether the housing element of the jurisdiction
30 substantially complies with this article and, once the court makes
31 that determination, it shall have the same force and effect, for all
32 purposes, as the department's determination that the housing
33 element substantially complies with this article. An agent appointed
34 pursuant to this paragraph shall have expertise in planning in
35 California.

36 (4) This subdivision does not limit a court's discretion to apply
37 any and all remedies in an action or special proceeding for a
38 violation of any law identified in subdivision (j).

39 (m) In determining the application of the remedies available
40 under subdivision (l), the court shall consider whether there are

1 any mitigating circumstances delaying the jurisdiction from coming
2 into compliance with state housing law. The court may consider
3 whether a city, county, or city and county is making a good faith
4 effort to come into substantial compliance or is facing substantial
5 undue hardships.

6 (n) The office of the Attorney General may seek all remedies
7 available under law including those set forth in this section.

8 SEC. 2. Section 65585.5 is added to the Government Code, to
9 read:

10 65585.5. (a) Commencing with the sixth revision of the
11 housing element pursuant to Section 65588, the department shall
12 determine the relative progress toward meeting regional housing
13 needs subject to the following:

14 (1) (A) The department shall determine relative progress toward
15 meeting regional housing needs for all housing and lower income
16 housing during the fifth year of the applicable planning period.

17 (B) The department shall also determine relative progress toward
18 meeting regional housing needs for all housing during the year
19 after the completion of the jurisdiction's planning period. The
20 department's determination of relative progress under this
21 subparagraph shall be used to determine jurisdictions that must
22 attain a prohousing designation pursuant to Section 65589.10 and
23 shall not be the basis for a midcycle housing element consultation
24 under subdivision (b).

25 (2) The department shall make relative progress determinations
26 based on the information contained in the annual reports submitted
27 pursuant to Section 65400, and shall measure relative progress
28 subject to the following:

29 (A) For each jurisdiction:

30 (i) Relative progress for all housing shall be measured by
31 dividing the jurisdiction's progress toward meeting its share of the
32 regional housing need by its prorated share of the regional housing
33 need, as determined pursuant to Section 65584.

34 (ii) Relative progress for lower income housing shall be
35 measured by dividing the jurisdiction's progress toward meeting
36 its share of the regional housing need for the very low and
37 low-income categories by its prorated share of the regional housing
38 need for very low and low-income households, as determined
39 pursuant to Section 65584.

40 (B) For each council of governments:

1 (i) Relative progress for all housing shall be measured by
2 summing the progress of each of the council of governments'
3 member jurisdictions toward meeting their share of the regional
4 housing need and dividing that sum by the prorated regional
5 housing need, as determined pursuant to Section 65584.01.

6 (ii) Relative progress for lower income housing shall be
7 measured by summing the progress of each of the council of
8 governments' member jurisdictions toward meeting their share of
9 the regional housing need for very low and low-income households
10 and dividing that sum by the prorated regional housing need for
11 very low and low-income households, as determined pursuant to
12 Section 65584.01.

13 (C) For each subregion:

14 (i) Relative progress for all housing shall be measured by
15 summing the progress of each of the subregion's member
16 jurisdictions toward meeting their share of the subregional housing
17 need and dividing that sum by the prorated subregional housing
18 need, as determined pursuant to Section 65584.03.

19 (ii) Relative progress for lower income housing shall be
20 measured by summing the progress of each of the subregion's
21 member jurisdictions toward meeting their share of the subregional
22 housing need for very low and low-income households and dividing
23 that sum by the prorated subregional housing need for very low
24 and low-income households, as determined pursuant to Section
25 65584.03.

26 (3) This subdivision shall only apply to jurisdictions with an
27 eight-year housing element planning period, pursuant to Section
28 65588.

29 (4) Determinations of relative progress shall be published on
30 the department's internet website by July 1 of the year in which
31 relative progress is determined.

32 (b) (1) A jurisdiction shall undertake a midcycle housing
33 element consultation with the department if both of the following
34 occur:

35 (A) The jurisdiction's progress toward meeting its share of the
36 regional housing need is less than its prorated share of the regional
37 housing need.

38 (B) The jurisdiction meets one of the following:

39 (i) The jurisdiction's relative progress for all housing during
40 the fifth year of the applicable planning period, pursuant to

1 subdivision (a), is less than the relative progress for all housing of
2 the jurisdiction's affiliated council of governments or subregion.

3 (ii) The jurisdiction's relative progress for very low and
4 low-income households during the fifth year of the applicable
5 planning period, pursuant to subdivision (a), is less than the relative
6 progress for very low and low-income households of the
7 jurisdiction's affiliated council of governments or subregion.

8 (2) A jurisdiction required to conduct a midcycle housing
9 element consultation pursuant to this subdivision shall, in
10 coordination with the ~~department, do all of the following:~~
11 *department and for any of the categories for which the jurisdiction*
12 *is required to undertake a midcycle housing element consultation*
13 *pursuant to paragraph (1), review and update, as necessary, all*
14 *scheduled programs and ensure that all programs have enforceable*
15 *actions and concrete timelines.*

16 ~~(A) Review and update, as necessary, all goals, policies,~~
17 ~~quantified objectives, financial resources, and scheduled programs.~~

18 ~~(B) Ensure that all programs have enforceable actions and~~
19 ~~concrete timelines.~~

20 (3) (A) By July 1 of the year in which the determination of
21 relative progress has occurred pursuant to subdivision (a), the
22 department shall notify each jurisdiction, in writing, of their need
23 to comply with this subdivision.

24 (B) A midcycle housing element consultation shall occur within
25 six months of the jurisdiction receiving the notice pursuant to
26 subparagraph (A).

27 (C) Any revisions to the housing element required by the
28 department during a midcycle housing element consultation must
29 be completed within one year of the consultation.

30 (4) The department may apply the requirements of this
31 subdivision to any jurisdiction that fails to submit a substantially
32 compliant annual report pursuant to the timelines and requirements
33 of Section 65400.

34 (5) If the department determines that a jurisdiction has not
35 complied with the requirements of this subdivision, the department
36 shall find that their housing element does not substantially comply
37 with this article, pursuant to Section 65585.

38 (c) *The section shall not be construed to diminish or undermine*
39 *the department's enforcement authority granted elsewhere in*
40 *statute or regulation.*

1 SEC. 3. Section 65589.10 is added to the Government Code,
2 to read:

3 65589.10. (a) Commencing with the sixth revision of the
4 housing element pursuant to Section 65588, any jurisdiction whose
5 relative progress toward meeting its share of the regional or
6 subregional housing need for all housing, as determined pursuant
7 to paragraph (2) of subdivision (a) of Section 65585.5, is at least
8 10 percentage points less than the relative progress of their
9 affiliated council of governments or subregion shall be required
10 to attain a prohousing designation by the department pursuant to
11 subdivision (c) of Section 65589.9.

12 (b) (1) The department shall determine whether a jurisdiction
13 is required to attain a prohousing designation pursuant to
14 subdivision (a) by July 1 of the year in which the determination
15 of relative progress has occurred.

16 (2) The department shall make a second determination of
17 whether a jurisdiction is required to attain a prohousing designation
18 pursuant to subdivision (a) by July 1 of the year after the
19 completion of the jurisdiction's planning period.

20 (3) The department shall provide written notice to a jurisdiction
21 that must attain a prohousing designation pursuant to subdivision
22 (a) by July 1 of the year in which the determination is made.

23 (4) A jurisdiction that receives written notice pursuant to
24 paragraph (3) that does not already have a prohousing designation
25 shall attain a prohousing designation by July 1 of the year after
26 receiving the notice pursuant to paragraph (3). If the jurisdiction
27 does not comply with this timeline, the department shall find that
28 the jurisdiction's housing element does not substantially comply
29 with this article pursuant to Section 65585.

30 (c) The department may apply the requirements of this section
31 to any jurisdiction that fails to submit a substantially compliant
32 annual report pursuant to the timelines and requirements of Section
33 65400.

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O

TMG Partners

Opposition

California Cities for Local Control
Catalysts
California State Association of Counties
League of California Cities
Mission Street Neighbors

New Livable California DbA Livable
California
Riviera Homeowners Association
Rural County Representatives of California
Sustainable Tamalmonite
Urban Counties of California

Status

Passed the Assembly and is currently in the Senate Rules Committee

AB 571 (Mayes) – Planning and zoning: density bonuses: affordable housing

Summary

- This bill prohibits a city or county from charging affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units.
- This bill would prohibit a local government from charging fees through an inclusionary housing ordinance or in lieu fees, on the affordable housing units in a development that uses density bonus.

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

Status

Passed the Assembly and is currently in the Senate Rules Committee.

AMENDED IN ASSEMBLY MAY 3, 2021
AMENDED IN ASSEMBLY MARCH 24, 2021
CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 571

Introduced by Assembly Member Mayes

February 11, 2021

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 571, as amended, Mayes. Planning and zoning: density bonuses: affordable housing.

Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development in the city or county 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 agrees to, among other things, construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents, including lower income students. Existing law requires the amount of a density bonus and the number of incentives or concessions a qualifying developer receives to be pursuant to a certain formula based on the total number of units in the housing development, as specified.

This bill would prohibit affordable housing impact fees, including inclusionary zoning fees, fees and in-lieu fees, and public benefit fees, from being imposed on a housing development's affordable units.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 65915 of the Government Code, as
2 amended by Section 2 of Chapter 197 of the Statutes of 2020, is
3 amended to read:

4 65915. (a) (1) When an applicant seeks a density bonus for
5 a housing development within, or for the donation of land for
6 housing within, the jurisdiction of a city, county, or city and county,
7 that local government shall comply with this section. A city,
8 county, or city and county shall adopt an ordinance that specifies
9 how compliance with this section will be implemented. Except as
10 otherwise provided in subdivision (s), failure to adopt an ordinance
11 shall not relieve a city, county, or city and county from complying
12 with this section.

13 (2) A local government shall not condition the submission,
14 review, or approval of an application pursuant to this chapter on
15 the preparation of an additional report or study that is not otherwise
16 required by state law, including this section. This subdivision does
17 not prohibit a local government from requiring an applicant to
18 provide reasonable documentation to establish eligibility for a
19 requested density bonus, incentives or concessions, as described
20 in subdivision (d), waivers or reductions of development standards,
21 as described in subdivision (e), and parking ratios, as described in
22 subdivision (p).

23 (3) In order to provide for the expeditious processing of a density
24 bonus application, the local government shall do all of the
25 following:

26 (A) Adopt procedures and timelines for processing a density
27 bonus application.

28 (B) Provide a list of all documents and information required to
29 be submitted with the density bonus application in order for the

1 density bonus application to be deemed complete. This list shall
2 be consistent with this chapter.

3 (C) Notify the applicant for a density bonus whether the
4 application is complete in a manner consistent with the timelines
5 specified in Section 65943.

6 (D) (i) If the local government notifies the applicant that the
7 application is deemed complete pursuant to subparagraph (C),
8 provide the applicant with a determination as to the following
9 matters:

10 (I) The amount of density bonus, calculated pursuant to
11 subdivision (f), for which the applicant is eligible.

12 (II) If the applicant requests a parking ratio pursuant to
13 subdivision (p), the parking ratio for which the applicant is eligible.

14 (III) If the applicant requests incentives or concessions pursuant
15 to subdivision (d) or waivers or reductions of development
16 standards pursuant to subdivision (e), whether the applicant has
17 provided adequate information for the local government to make
18 a determination as to those incentives, concessions, or waivers or
19 reductions of development standards.

20 (ii) Any determination required by this subparagraph shall be
21 based on the development project at the time the application is
22 deemed complete. The local government shall adjust the amount
23 of density bonus and parking ratios awarded pursuant to this section
24 based on any changes to the project during the course of
25 development.

26 (b) (1) A city, county, or city and county shall grant one density
27 bonus, the amount of which shall be as specified in subdivision
28 (f), and, if requested by the applicant and consistent with the
29 applicable requirements of this section, incentives or concessions,
30 as described in subdivision (d), waivers or reductions of
31 development standards, as described in subdivision (e), and parking
32 ratios, as described in subdivision (p), when an applicant for a
33 housing development seeks and agrees to construct a housing
34 development, excluding any units permitted by the density bonus
35 awarded pursuant to this section, that will contain at least any one
36 of the following:

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

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

4 (C) A senior citizen housing development, as defined in Sections
5 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
6 residency based on age requirements for housing for older persons
7 pursuant to Section 798.76 or 799.5 of the Civil Code.

8 (D) Ten percent of the total dwelling units in a common interest
9 development, as defined in Section 4100 of the Civil Code, for
10 persons and families of moderate income, as defined in Section
11 50093 of the Health and Safety Code, provided that all units in the
12 development are offered to the public for purchase.

13 (E) Ten percent of the total units of a housing development for
14 transitional foster youth, as defined in Section 66025.9 of the
15 Education Code, disabled veterans, as defined in Section 18541,
16 or homeless persons, as defined in the federal McKinney-Vento
17 Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units
18 described in this subparagraph shall be subject to a recorded
19 affordability restriction of 55 years and shall be provided at the
20 same affordability level as very low income units.

21 (F) (i) Twenty percent of the total units for lower income
22 students in a student housing development that meets the following
23 requirements:

24 (I) All units in the student housing development will be used
25 exclusively for undergraduate, graduate, or professional students
26 enrolled full time at an institution of higher education accredited
27 by the Western Association of Schools and Colleges or the
28 Accrediting Commission for Community and Junior Colleges. In
29 order to be eligible under this subclause, the developer shall, as a
30 condition of receiving a certificate of occupancy, provide evidence
31 to the city, county, or city and county that the developer has entered
32 into an operating agreement or master lease with one or more
33 institutions of higher education for the institution or institutions
34 to occupy all units of the student housing development with
35 students from that institution or institutions. An operating
36 agreement or master lease entered into pursuant to this subclause
37 is not violated or breached if, in any subsequent year, there are not
38 sufficient students enrolled in an institution of higher education
39 to fill all units in the student housing development.

1 (II) The applicable 20-percent units will be used for lower
2 income students. For purposes of this clause, “lower income
3 students” means students who have a household income and asset
4 level that does not exceed the level for Cal Grant A or Cal Grant
5 B award recipients as set forth in paragraph (1) of subdivision (k)
6 of Section 69432.7 of the Education Code. The eligibility of a
7 student under this clause shall be verified by an affidavit, award
8 letter, or letter of eligibility provided by the institution of higher
9 education that the student is enrolled in, as described in subclause
10 (I), or by the California Student Aid Commission that the student
11 receives or is eligible for financial aid, including an institutional
12 grant or fee waiver, from the college or university, the California
13 Student Aid Commission, or the federal government shall be
14 sufficient to satisfy this subclause.

15 (III) The rent provided in the applicable units of the development
16 for lower income students shall be calculated at 30 percent of 65
17 percent of the area median income for a single-room occupancy
18 unit type.

19 (IV) The development will provide priority for the applicable
20 affordable units for lower income students experiencing
21 homelessness. A homeless service provider, as defined in paragraph
22 (3) of subdivision (e) of Section 103577 of the Health and Safety
23 Code, or institution of higher education that has knowledge of a
24 person’s homeless status may verify a person’s status as homeless
25 for purposes of this subclause.

26 (ii) For purposes of calculating a density bonus granted pursuant
27 to this subparagraph, the term “unit” as used in this section means
28 one rental bed and its pro rata share of associated common area
29 facilities. The units described in this subparagraph shall be subject
30 to a recorded affordability restriction of 55 years.

31 (G) One hundred percent of all units in the development,
32 including total units and density bonus units, but exclusive of a
33 manager’s unit or units, are for lower income households, as
34 defined by Section 50079.5 of the Health and Safety Code, except
35 that up to 20 percent of the units in the development, including
36 total units and density bonus units, may be for moderate-income
37 households, as defined in Section 50053 of the Health and Safety
38 Code.

39 (2) For purposes of calculating the amount of the density bonus
40 pursuant to subdivision (f), an applicant who requests a density

1 bonus pursuant to this subdivision shall elect whether the bonus
2 shall be awarded on the basis of subparagraph (A), (B), (C), (D),
3 (E), (F), or (G) of paragraph (1).

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

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

15 (B) (i) Except as otherwise provided in clause (ii), rents for the
16 lower income density bonus units shall be set at an affordable rent,
17 as defined in Section 50053 of the Health and Safety Code.

18 (ii) For housing developments meeting the criteria of
19 subparagraph (G) of paragraph (1) of subdivision (b), rents for all
20 units in the development, including both base density and density
21 bonus units, shall be as follows:

22 (I) The rent for at least 20 percent of the units in the
23 development shall be set at an affordable rent, as defined in Section
24 50053 of the Health and Safety Code.

25 (II) The rent for the remaining units in the development shall
26 be set at an amount consistent with the maximum rent levels for
27 a housing development that receives an allocation of state or federal
28 low-income housing tax credits from the California Tax Credit
29 Allocation Committee.

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

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

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

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

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

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

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

38 (B) For the purposes of this paragraph, "replace" shall mean
39 either of the following:

1 (i) If any dwelling units described in subparagraph (A) are
2 occupied on the date of application, the proposed housing
3 development shall provide at least the same number of units of
4 equivalent size to be made available at affordable rent or affordable
5 housing cost to, and occupied by, persons and families in the same
6 or lower income category as those households in occupancy. If
7 the income category of the household in occupancy is not known,
8 it shall be rebuttably presumed that lower income renter households
9 occupied these units in the same proportion of lower income renter
10 households to all renter households within the jurisdiction, as
11 determined by the most recently available data from the United
12 States Department of Housing and Urban Development's
13 Comprehensive Housing Affordability Strategy database. For
14 unoccupied dwelling units described in subparagraph (A) in a
15 development with occupied units, the proposed housing
16 development shall provide units of equivalent size to be made
17 available at affordable rent or affordable housing cost to, and
18 occupied by, persons and families in the same or lower income
19 category as the last household in occupancy. If the income category
20 of the last household in occupancy is not known, it shall be
21 rebuttably presumed that lower income renter households occupied
22 these units in the same proportion of lower income renter
23 households to all renter households within the jurisdiction, as
24 determined by the most recently available data from the United
25 States Department of Housing and Urban Development's
26 Comprehensive Housing Affordability Strategy database. All
27 replacement calculations resulting in fractional units shall be
28 rounded up to the next whole number. If the replacement units will
29 be rental dwelling units, these units shall be subject to a recorded
30 affordability restriction for at least 55 years. If the proposed
31 development is for-sale units, the units replaced shall be subject
32 to paragraph (2).

33 (ii) If all dwelling units described in subparagraph (A) have
34 been vacated or demolished within the five-year period preceding
35 the application, the proposed housing development shall provide
36 at least the same number of units of equivalent size as existed at
37 the highpoint of those units in the five-year period preceding the
38 application to be made available at affordable rent or affordable
39 housing cost to, and occupied by, persons and families in the same
40 or lower income category as those persons and families in

1 occupancy at that time, if known. If the incomes of the persons
2 and families in occupancy at the highpoint is not known, it shall
3 be rebuttably presumed that low-income and very low income
4 renter households occupied these units in the same proportion of
5 low-income and very low income renter households to all renter
6 households within the jurisdiction, as determined by the most
7 recently available data from the United States Department of
8 Housing and Urban Development's Comprehensive Housing
9 Affordability Strategy database. All replacement calculations
10 resulting in fractional units shall be rounded up to the next whole
11 number. If the replacement units will be rental dwelling units,
12 these units shall be subject to a recorded affordability restriction
13 for at least 55 years. If the proposed development is for-sale units,
14 the units replaced shall be subject to paragraph (2).

15 (C) Notwithstanding subparagraph (B), for any dwelling unit
16 described in subparagraph (A) that is or was, within the five-year
17 period preceding the application, subject to a form of rent or price
18 control through a local government's valid exercise of its police
19 power and that is or was occupied by persons or families above
20 lower income, the city, county, or city and county may do either
21 of the following:

22 (i) Require that the replacement units be made available at
23 affordable rent or affordable housing cost to, and occupied by,
24 low-income persons or families. If the replacement units will be
25 rental dwelling units, these units shall be subject to a recorded
26 affordability restriction for at least 55 years. If the proposed
27 development is for-sale units, the units replaced shall be subject
28 to paragraph (2).

29 (ii) Require that the units be replaced in compliance with the
30 jurisdiction's rent or price control ordinance, provided that each
31 unit described in subparagraph (A) is replaced. Unless otherwise
32 required by the jurisdiction's rent or price control ordinance, these
33 units shall not be subject to a recorded affordability restriction.

34 (D) For purposes of this paragraph, "equivalent size" means
35 that the replacement units contain at least the same total number
36 of bedrooms as the units being replaced.

37 (E) Subparagraph (A) does not apply to an applicant seeking a
38 density bonus for a proposed housing development if the
39 applicant's application was submitted to, or processed by, a city,
40 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 result in identifiable and actual cost reductions, consistent with subdivision (k), 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-income 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 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 persons and families of moderate income in a common interest development.

(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 persons and families of moderate income in a common interest development.

1 (D) Four incentives or concessions for projects meeting the
2 criteria of subparagraph (G) of paragraph (1) of subdivision (b).
3 If the project is located within one-half mile of a major transit stop,
4 the applicant shall also receive a height increase of up to three
5 additional stories, or 33 feet.

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

24 (4) The city, county, or city and county shall bear the burden
25 of proof for the denial of a requested concession or incentive.

26 (e) (1) In no case may a city, county, or city and county apply
27 any development standard that will have the effect of physically
28 precluding the construction of a development meeting the criteria
29 of subdivision (b) at the densities or with the concessions or
30 incentives permitted by this section. Subject to paragraph (3), an
31 applicant may submit to a city, county, or city and county a
32 proposal for the waiver or reduction of development standards that
33 will have the effect of physically precluding the construction of a
34 development meeting the criteria of subdivision (b) at the densities
35 or with the concessions or incentives permitted under this section,
36 and may request a meeting with the city, county, or city and county.
37 If a court finds that the refusal to grant a waiver or reduction of
38 development standards is in violation of this section, the court
39 shall award the plaintiff reasonable attorney's fees and costs of
40 suit. Nothing in this subdivision shall be interpreted to require a

1 local government to waive or reduce development standards if the
 2 waiver or reduction would have a specific, adverse impact, as
 3 defined in paragraph (2) of subdivision (d) of Section 65589.5,
 4 upon health, safety, or the physical environment, and for which
 5 there is no feasible method to satisfactorily mitigate or avoid the
 6 specific adverse impact. Nothing in this subdivision shall be
 7 interpreted to require a local government to waive or reduce
 8 development standards that would have an adverse impact on any
 9 real property that is listed in the California Register of Historical
 10 Resources, or to grant any waiver or reduction that would be
 11 contrary to state or federal law.

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

16 (3) A housing development that receives a waiver from any
 17 maximum controls on density pursuant to clause (ii) of
 18 subparagraph (D) of paragraph (3) of subdivision (f) shall only be
 19 eligible for a waiver or reduction of development standards as
 20 provided in subparagraph (D) of paragraph (2) of subdivision (d)
 21 and clause (ii) of subparagraph (D) of paragraph (3) of subdivision
 22 (f), unless the city, county, or city and county agrees to additional
 23 waivers or reductions of development standards.

24 (f) For the purposes of this chapter, “density bonus” means a
 25 density increase over the otherwise maximum allowable gross
 26 residential density as of the date of application by the applicant to
 27 the city, county, or city and county, or, if elected by the applicant,
 28 a lesser percentage of density increase, including, but not limited
 29 to, no increase in density. The amount of density increase to which
 30 the applicant is entitled shall vary according to the amount by
 31 which the percentage of affordable housing units exceeds the
 32 percentage established in subdivision (b).

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

| Percentage Low-Income Units | Percentage Density Bonus |
|-----------------------------|-----------------------------|
| 10 | 20 |
| 11 | 21.5 |

| | | |
|----|----|-------|
| 1 | 12 | 23 |
| 2 | 13 | 24.5 |
| 3 | 14 | 26 |
| 4 | 15 | 27.5 |
| 5 | 16 | 29 |
| 6 | 17 | 30.5 |
| 7 | 18 | 32 |
| 8 | 19 | 33.5 |
| 9 | 20 | 35 |
| 10 | 21 | 38.75 |
| 11 | 22 | 42.5 |
| 12 | 23 | 46.25 |
| 13 | 24 | 50 |

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24 (2) For housing developments meeting the criteria of
25 subparagraph (B) of paragraph (1) of subdivision (b), the density
26 bonus shall be calculated as follows:

| | | |
|----|----------------------------------|--------------------------|
| 27 | | |
| 28 | Percentage Very Low Income Units | Percentage Density Bonus |
| 29 | 5 | 20 |
| 30 | 6 | 22.5 |
| 31 | 7 | 25 |
| 32 | 8 | 27.5 |
| 33 | 9 | 30 |
| 34 | 10 | 32.5 |
| 35 | 11 | 35 |
| 36 | 12 | 38.75 |
| 37 | 13 | 42.5 |
| 38 | 14 | 46.25 |
| 39 | 15 | 50 |

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(3) (A) 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.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, the city, county, or city and county shall not impose any maximum controls on density.

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

| Percentage Moderate-Income Units | Percentage Density Bonus |
|----------------------------------|--------------------------|
| 10 | 5 |
| 11 | 6 |
| 12 | 7 |
| 13 | 8 |

| | | |
|----|----|-------|
| 1 | 14 | 9 |
| 2 | 15 | 10 |
| 3 | 16 | 11 |
| 4 | 17 | 12 |
| 5 | 18 | 13 |
| 6 | 19 | 14 |
| 7 | 20 | 15 |
| 8 | 21 | 16 |
| 9 | 22 | 17 |
| 10 | 23 | 18 |
| 11 | 24 | 19 |
| 12 | 25 | 20 |
| 13 | 26 | 21 |
| 14 | 27 | 22 |
| 15 | 28 | 23 |
| 16 | 29 | 24 |
| 17 | 30 | 25 |
| 18 | 31 | 26 |
| 19 | 32 | 27 |
| 20 | 33 | 28 |
| 21 | 34 | 29 |
| 22 | 35 | 30 |
| 23 | 36 | 31 |
| 24 | 37 | 32 |
| 25 | 38 | 33 |
| 26 | 39 | 34 |
| 27 | 40 | 35 |
| 28 | 41 | 38.75 |
| 29 | 42 | 42.5 |
| 30 | 43 | 46.25 |
| 31 | 44 | 50 |

(5) 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.

(6) Affordable housing impact fees, including inclusionary zoning fees, fees and in-lieu fees, and public benefit fees, shall not be imposed on a housing development's affordable units.

(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:

| Percentage Very Low Income | Percentage Density Bonus |
|----------------------------|--------------------------|
| 10 | 15 |
| 11 | 16 |
| 12 | 17 |
| 13 | 18 |
| 14 | 19 |
| 15 | 20 |
| 16 | 21 |
| 17 | 22 |
| 18 | 23 |
| 19 | 24 |
| 20 | 25 |
| 21 | 26 |
| 22 | 27 |
| 23 | 28 |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 32 |
| 28 | 33 |
| 29 | 34 |
| 30 | 35 |

(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

1 density bonus described in this subdivision if all of the following
2 conditions are met:

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

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

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

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

27 (E) The transferred land and the affordable units shall be subject
28 to a deed restriction ensuring continued affordability of the units
29 consistent with paragraphs (1) and (2) of subdivision (c), which
30 shall be recorded on the property at the time of the transfer.

31 (F) The land is transferred to the local agency or to a housing
32 developer approved by the local agency. The local agency may
33 require the applicant to identify and transfer the land to the
34 developer.

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

38 (H) A proposed source of funding for the very low income units
39 shall be identified not later than the date of approval of the final

1 subdivision map, parcel map, or residential development
2 application.

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

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

11 (B) An additional concession or incentive that contributes
12 significantly to the economic feasibility of the construction of the
13 childcare facility.

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

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

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

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

32 (4) “Childcare facility,” as used in this section, means a child
33 daycare facility other than a family daycare home, including, but
34 not limited to, infant centers, preschools, extended daycare
35 facilities, and schoolage childcare centers.

36 (i) “Housing development,” as used in this section, means a
37 development project for five or more residential units, including
38 mixed-use developments. For the purposes of this section, “housing
39 development” also includes a subdivision or common interest
40 development, as defined in Section 4100 of the Civil Code,

1 approved by a city, county, or city and county and consists of
2 residential units or unimproved residential lots and either a project
3 to substantially rehabilitate and convert an existing commercial
4 building to residential use or the substantial rehabilitation of an
5 existing multifamily dwelling, as defined in subdivision (d) of
6 Section 65863.4, where the result of the rehabilitation would be a
7 net increase in available residential units. For the purpose of
8 calculating a density bonus, the residential units shall be on
9 contiguous sites that are the subject of one development
10 application, but do not have to be based upon individual
11 subdivision maps or parcels. The density bonus shall be permitted
12 in geographic areas of the housing development other than the
13 areas where the units for the lower income households are located.

14 (j) (1) The granting of a concession or incentive shall not require
15 or be interpreted, in and of itself, to require a general plan
16 amendment, local coastal plan amendment, zoning change, study,
17 or other discretionary approval. For purposes of this subdivision,
18 “study” does not include reasonable documentation to establish
19 eligibility for the concession or incentive or to demonstrate that
20 the incentive or concession meets the definition set forth in
21 subdivision (k). This provision is declaratory of existing law.

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

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

28 (1) A reduction in site development standards or a modification
29 of zoning code requirements or architectural design requirements
30 that exceed the minimum building standards approved by the
31 California Building Standards Commission as provided in Part 2.5
32 (commencing with Section 18901) of Division 13 of the Health
33 and Safety Code, including, but not limited to, a reduction in
34 setback and square footage requirements and in the ratio of
35 vehicular parking spaces that would otherwise be required that
36 results in identifiable and actual cost reductions, to provide for
37 affordable housing costs, as defined in Section 50052.5 of the
38 Health and Safety Code, or for rents for the targeted units to be
39 set as specified in subdivision (c).

(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 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).

(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). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and 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,

1 specific plan, charter, or other local condition, law, policy,
2 resolution, or regulation.

3 (2) “Located within one-half mile of a major transit stop” means
4 that any point on a proposed development, for which an applicant
5 seeks a density bonus, other incentives or concessions, waivers or
6 reductions of development standards, or a vehicular parking ratio
7 pursuant to this section, is within one-half mile of any point on
8 the property on which a major transit stop is located, including
9 any parking lot owned by the transit authority or other local agency
10 operating the major transit stop.

11 (3) “Major transit stop” has the same meaning as defined in
12 subdivision (b) of Section 21155 of the Public Resources Code.

13 (4) “Maximum allowable residential density” means the density
14 allowed under the zoning ordinance and land use element of the
15 general plan, or, if a range of density is permitted, means the
16 maximum allowable density for the specific zoning range and land
17 use element of the general plan applicable to the project. If the
18 density allowed under the zoning ordinance is inconsistent with
19 the density allowed under the land use element of the general plan,
20 the general plan density shall prevail.

21 (p) (1) Except as provided in paragraphs (2), (3), and (4), upon
22 the request of the developer, a city, county, or city and county shall
23 not require a vehicular parking ratio, inclusive of parking for
24 persons with a disability and guests, of a development meeting the
25 criteria of subdivisions (b) and (c), that exceeds the following
26 ratios:

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

28 (B) Two to three bedrooms: one and one-half onsite parking
29 spaces.

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

31 (2) (A) Notwithstanding paragraph (1), if a development
32 includes at least 20 percent low-income units for housing
33 developments meeting the criteria of subparagraph (A) of paragraph
34 (1) of subdivision (b) or at least 11 percent very low income units
35 for housing developments meeting the criteria of subparagraph
36 (B) of paragraph (1) of subdivision (b), is located within one-half
37 mile of a major transit stop, and there is unobstructed access to
38 the major transit stop from the development, then, upon the request
39 of the developer, a city, county, or city and county shall not impose

1 a vehicular parking ratio, inclusive of parking for persons with a
2 disability and guests, that exceeds 0.5 spaces per unit.

3 (B) For purposes of this subdivision, a development shall have
4 unobstructed access to a major transit stop if a resident is able to
5 access the major transit stop without encountering natural or
6 constructed impediments. For purposes of this subparagraph,
7 “natural or constructed impediments” includes, but is not limited
8 to, freeways, rivers, mountains, and bodies of water, but does not
9 include residential structures, shopping centers, parking lots, or
10 rails used for transit.

11 (3) Notwithstanding paragraph (1), if a development consists
12 solely of rental units, exclusive of a manager’s unit or units, with
13 an affordable housing cost to lower income families, as provided
14 in Section 50052.5 of the Health and Safety Code, then, upon the
15 request of the developer, a city, county, or city and county shall
16 not impose vehicular parking standards if the development meets
17 either of the following criteria:

18 (A) The development is located within one-half mile of a major
19 transit stop and there is unobstructed access to the major transit
20 stop from the development.

21 (B) The development is a for-rent housing development for
22 individuals who are 62 years of age or older that complies with
23 Sections 51.2 and 51.3 of the Civil Code and the development has
24 either paratransit service or unobstructed access, within one-half
25 mile, to fixed bus route service that operates at least eight times
26 per day.

27 (4) Notwithstanding paragraphs (1) and (8), if a development
28 consists solely of rental units, exclusive of a manager’s unit or
29 units, with an affordable housing cost to lower income families,
30 as provided in Section 50052.5 of the Health and Safety Code, and
31 the development is either a special needs housing development,
32 as defined in Section 51312 of the Health and Safety Code, or a
33 supportive housing development, as defined in Section 50675.14
34 of the Health and Safety Code, then, upon the request of the
35 developer, a city, county, or city and county shall not impose any
36 minimum vehicular parking requirement. A development that is
37 a special needs housing development shall have either paratransit
38 service or unobstructed access, within one-half mile, to fixed bus
39 route service that operates at least eight times per day.

1 (5) If the total number of parking spaces required for a
2 development is other than a whole number, the number shall be
3 rounded up to the next whole number. For purposes of this
4 subdivision, a development may provide onsite parking through
5 tandem parking or uncovered parking, but not through onstreet
6 parking.

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

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

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

32 (9) A request pursuant to this subdivision shall neither reduce
33 nor increase the number of incentives or concessions to which the
34 applicant is entitled pursuant to subdivision (d).

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

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

1 (s) Notwithstanding any other law, if a city, including a charter
2 city, county, or city and county has adopted an ordinance or a
3 housing program, or both an ordinance and a housing program,
4 that incentivizes the development of affordable housing that allows
5 for density bonuses that exceed the density bonuses required by
6 the version of this section effective through December 31, 2020,
7 that city, county, or city and county is not required to amend or
8 otherwise update its ordinance or corresponding affordable housing
9 incentive program to comply with the amendments made to this
10 section by the act adding this subdivision, and is exempt from
11 complying with the incentive and concession calculation
12 amendments made to this section by the act adding this subdivision
13 as set forth in subdivision (d), particularly subparagraphs (C) and
14 (D) of paragraph (2) of that subdivision, and the amendments made
15 to the density tables under subdivision (f).

16 SEC. 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.