

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1763 (Chiu) – As Amended March 28, 2019

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

SUMMARY: Requires a city or county to award a developer additional density, concessions, and incentives, if 100% of the units in a development are restricted to lower-income households. Specifically, **this bill:**

1) Modifies density bonus law as follows:

- a) Requires, when an applicant for a density bonus proposes a development that includes 100% of the total units, exclusive of a manager's unit or units, to be for lower income households, as defined, the city or county to provide the following:
 - i) Four incentives and concessions;
 - ii) A density bonus that is 80% of the number of units for lower income households;
 - iii) For housing developments within one-half mile of a "major transit stop," the city or county shall:
 - (1) Not impose any maximum controls on density;
 - (2) Allow a height increase of up to three additional stories or 33 feet; and,
 - (3) Allow an increase in the allowable floor area ratio of up to 55% relative to the underlying limit or 4.25, whichever is greater.
 - iv) For a housing development within one-half mile of a "high quality transit corridor", a city or county shall:
 - (1) Not impose any maximum controls on density;
 - (2) Allow a height increase up to two additional stories, or 22 feet; and,
 - (3) Allow an increase in the floor area ratio of up to 50% relative to the underlying limit or 3.75, whichever is greater.
- b) Defines the following terms:
 - i) "Major transit stop" to mean a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods; and,
 - ii) "High quality transit corridor" to mean a corridor with a fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

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

COMMENTS:

- 1) **Density Bonus Law.** Originally enacted in 1979, density bonus law was created to help address the affordable housing shortage and to encourage development of more low and moderate income housing units. It 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 the inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density, as well as other concessions and incentives, which are intended to support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus. Failure to adopt an ordinance does not mean a city or county does not have to comply with the law. As part of the density bonus application, a developer may also request incentives, concessions and parking ratio reductions, which can vary depending on the percentage and type of affordable housing included in the project.

- 2) **Bill Summary and Author's Statement.** Under existing law, the maximum density a developer can access is a 35% density bonus and three concessions and incentives. To qualify for a 35% density bonus, a developer must restrict either 11% of the units in a development to very low income, or 20% to lower income. If a developer restricts 100% of the units to lower income households, the developer receives no additional density bonus.

This bill gives all 100% affordable development an 80% density bonus, and would give 100% affordable developments near transit additional height increases and floor area ratio increases.

This bill is sponsored by the California Housing Consortium.

According to the author, "In the midst of our state housing crisis, AB 1763 would create more affordable housing by giving 100% affordable housing developments an enhanced density bonus. Zoning is often a barrier to housing development. Existing zoning - density and height - are often too low for affordable housing developments to pencil out. After years of no funding for affordable housing, we now have new resources and we need to make every dollar count. For affordable housing developers, more density can make a project financially feasible and give a developer the opportunity to compete for a site against a market rate developer. AB 1763 gives 100% affordable housing developments an 80% density bonus above existing zoned density and four incentives or concessions. One-hundred percent affordable housing developments near transit would be eligible for an unlimited density bonus plus an increase in height or the floor area ratios, up to a limit. We need to act quickly to increase the supply of affordable housing. AB 1763 gives developers additional density which equals more units."

- 3) **Arguments in Support.** Supporters argue that the changes in the bill will increase the number of affordable units available to ensure that a maximum number of units are being built to help California reach its goal of adding 1.5 million affordable units.

- 4) **Arguments in Opposition.** The League of Cities writes that this bill “would alter existing land use policies based on transit service that is not under the authority of local jurisdictions” and that “granting a developer an unlimited density bonus and three additional stories is too extreme in many communities...such an expansion of [density bonus law] will undermine a city’s state-certified housing element and community-based housing plans.”
- 5) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 10, 2019, and passed with an 8-0 vote.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Housing Consortium [SPONSOR]
Abode Communities
Affirmed Housing
Aids Healthcare Foundation
C&C Development
California Housing Consortium
California Rural Legal Assistance Foundation
City of San Diego
Corporation for Supportive Housing
Dan Kalb, City Councilmember, City of Oakland
EAH Housing
Habitat for Humanity California
Housing California
Many Mansions
Palm Communities
Silicon Valley at Home (Sv@Home)
Telacu
The Pacific Companies
The Kennedy Commission
Wakeland Housing And Community Development Corporation
Western Center On Law & Poverty, Inc.

Opposition

League of California Cities (unless amended)

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958

FILED
OFFICE OF THE CITY CLERK
OAKLAND

19 APR 25 PM 2:32

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1763 (CHIU) THAT WOULD REQUIRE A CITY OR COUNTY TO PROVIDE 100% AFFORDABLE HOUSING DEVELOPMENT PROJECTS WITH VARIOUS DENSITY BONUS LAW BENEFITS, AS WELL AS HEIGHT INCREASES IF NEAR A MAJOR TRANSIT STOP OR HIGH-QUALITY TRANSIT CORRIDOR

WHEREAS, Californians are facing a housing affordability crisis, but the most significant impact is on low-income renters. Of 6 million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units; and

WHEREAS, to solve the shortage, the National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units that very low-income Californians can afford; and

WHEREAS, since the Oakland City Council approved "A Roadmap Toward Equity: Housing Solutions for Oakland, California" in September 2015, Oakland is outpacing its market-rate housing goals by a factor of 100% but has reached only 42% of its goal of 825 additional protected affordable units by end 2018; and

WHEREAS, Oakland and Alameda County voters approved local bond measures in 2016 for affordable housing production and acquisition but the affordable housing deficit will take years to overcome; and

WHEREAS, while the most significant barrier to the construction of affordable housing is a lack of public funding, the other major obstacle is low-density zoning because affordable housing projects need density to leverage the economies of scale that are necessary when investing limited public dollars; and

WHEREAS, while the existing State Density Bonus law allows a 35% increase in densities for projects with an affordable housing component, the heights and/or units per square foot restrictions for most jurisdictions still preclude necessary densities to make the economics of these projects work. Additionally, because the State Density Bonus law does not distinguish between projects in which 20% of the units are restricted to lower income households and 100% of the units are restricted to lower income households, it puts affordable housing at a competitive disadvantage with market rate housing; and

WHEREAS, Assembly Bill (AB) 1763 would revise the state density bonus law (DBL) to require a city or county to award a developer additional density, concessions and incentives, and height increases if 100% of the units in a development are restricted to lower income households. Specifically, this bill would:

- Allow a developer of a housing development that will contain 100% of the total units for lower income households to seek an 80% increase in density and up to four incentives and concessions, in contrast to existing law which allows for up to a 35% increase in density and up to three incentives and concessions.
- For developments that will contain 100% of the total units for lower income households and are within one-half mile of a major transit stop, prohibit a local government from imposing any maximum controls on density and require that local government to provide an additional increase in height of up to three stories (33 feet), and an increase in the allowable floor area ratio (FAR) of up to 55% or 4.25, whichever is greater.
- For developments that will contain 100% of the total units for lower income households and are within one-half mile of a high-quality transit corridor, prohibit a local government from imposing any maximum controls on density and would allow up to two additional stories (22 feet), and an increase in the allowable FAR of up to 55%, or 3.75, whichever is greater; and

WHEREAS, with these enhanced density bonuses for 100% affordable housing developments, AB 1763 will increase the number of units available to low-income residents, maximizing our limited resources in the fight to build more housing and make this a California for all; and

WHEREAS, AB 1763 is supported by affordable housing organizations such as California Housing Consortium (sponsor), Corporation for Supportive Housing, EAH Housing, and Housing California, as well as affordable housing developers such as Abode Communities, Affirmed housing, and C & C Development; now, therefore be it

RESOLVED: That the Oakland City Council hereby endorses AB 1763 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

OAKLAND CITY COUNCIL

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