

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN ASSEMBLY MAY 22, 2008

AMENDED IN ASSEMBLY MAY 6, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2280

Introduced by Assembly Members Saldana and Caballero

February 21, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2280, as amended, Saldana. Density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for low-, very low, or moderate-income households or qualifying residents.

This bill would impose certain procedures on the application for a density bonus and other incentives or concessions.

The bill would require a city, county, or city and county to grant a concession or incentive requested by the applicant under existing law unless the city, county, or city and county makes a written finding, based upon substantial evidence, that, among other things, the concession or incentive would be contrary to state or federal law.

The bill would delete a requirement that an applicant for a waiver or reduction of development standards show that the waiver or modification is necessary to make proposed housing units economically feasible.

The bill would require, as a condition for the granting of a density bonus to a developer in exchange for donating land to a city, county, or city and county for very low income housing, that the local agency identify a source of funding for the very low income units.

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

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

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

3 65915. (a) A city, county, or city and county shall comply
4 with the provisions of this section. An applicant may seek a density
5 bonus for a housing development with five or more units. A city,
6 county, or city and county shall grant a density bonus in accordance
7 with the provisions of this section and, when a density bonus is
8 requested, shall also provide the applicant incentives or concessions
9 for the production of housing units and child care facilities as
10 prescribed in this section. If a housing development requires a
11 discretionary approval, the applicant for the housing development
12 shall indicate whether the applicant is seeking a density bonus and
13 incentives or concessions pursuant to this section no later than the
14 date the application for the first discretionary approval for the
15 housing development is submitted. Any request for a density bonus
16 and incentives or concessions shall be reviewed concurrently with
17 the required discretionary approvals. No request may be made for
18 a density bonus and incentives or concessions after the date the
19 application for the first discretionary approval for the housing
20 development has been submitted, unless permitted by local
21 ordinance or unless no discretionary approvals were required for
22 the housing development. All cities, counties, or cities and counties
23 shall adopt an ordinance that specifies how compliance with this
24 section will be implemented. *Failure to adopt an ordinance shall*
25 *not relieve a city, county, or city and county from complying with*
26 *this section.*

27 (b) (1) A city, county, or city and county shall grant one density
28 bonus, the amount of which shall be as specified in subdivision

1 (f), and, if a density bonus is requested, incentives or concessions,
2 as described in subdivision (d), when an applicant for a housing
3 development seeks and agrees to construct a housing development,
4 excluding any units permitted by the density bonus awarded
5 pursuant to this section, that will contain at least any one of the
6 following:

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

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

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

18 (D) Ten percent of the total dwelling units in a common interest
19 development as defined in Section 1351 of the Civil Code for
20 persons and families of moderate income, as defined in Section
21 50093 of the Health and Safety Code, provided that all units in the
22 development are offered to the public for purchase.

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

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

32 (4) Notwithstanding paragraphs (1) to (3), inclusive, an applicant
33 for a project in which 49 percent or more of the units will be
34 affordable to households of low or very low income, as defined in
35 ~~Sections 50105 and 50079.5~~ 50079.5 and 50105 of the Health and
36 Safety Code, may request concessions and incentives, as described
37 in subdivision (d), without requesting a density bonus.

38 (c) (1) An applicant shall agree to, and the city, county, or city
39 and county shall ensure, continued affordability of all low- and
40 very low income units that qualified the applicant for the award

1 of the density bonus for 30 years or a longer period of time if
 2 required by the construction or mortgage financing assistance
 3 program, mortgage insurance program, or rental subsidy program.
 4 Rents for the lower income density bonus units shall be set at an
 5 affordable rent as defined in Section 50053 of the Health and Safety
 6 Code. Owner-occupied units shall be available at an affordable
 7 housing cost as defined in Section 50052.5 of the Health and Safety
 8 Code.

9 (2) An applicant shall agree to, and the city, county, or city and
 10 county shall ensure that, the initial occupant of the
 11 moderate-income units that are directly related to the receipt of
 12 the density bonus in the common interest development, as defined
 13 in Section 1351 of the Civil Code, are persons and families of
 14 moderate income, as defined in Section 50093 of the Health and
 15 Safety Code, and that the units are offered at an affordable housing
 16 cost, as that cost is defined in Section 50052.5 of the Health and
 17 Safety Code. The local government shall enforce an equity sharing
 18 agreement, unless it is in conflict with the requirements of another
 19 public funding source or law. The following apply to the equity
 20 sharing agreement:

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

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

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

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

9 (A) The concession or incentive is not required in order to
10 provide for affordable housing costs, as defined in Section 50052.5
11 of the Health and Safety Code, or for rents for the targeted units
12 to be set as specified in subdivision (c).

13 (B) The concession or incentive would have a specific adverse
14 impact, as defined in paragraph (2) of subdivision (d) of Section
15 65589.5, upon public health and safety or the physical environment
16 or on any real property that is listed in the California Register of
17 Historical Resources and for which there is no feasible method to
18 satisfactorily mitigate or avoid the specific adverse impact without
19 rendering the development unaffordable to low- and
20 moderate-income households.

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

23 (2) The applicant shall receive the following number of
24 incentives or concessions:

25 (A) One incentive or concession for projects that include at least
26 10 percent of the total units for lower income households, at least
27 5 percent for very low income households, or at least 10 percent
28 for persons and families of moderate income in a common interest
29 development.

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

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

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

19 (e) In no case may a city, county, or city and county apply any
20 development standard that will have the effect of physically
21 precluding the construction of a development meeting the criteria
22 of subdivision (b) at the densities or with the concessions or
23 incentives permitted by this section. An applicant may submit to
24 a city, county, or city and county a proposal for the waiver or
25 reduction of development standards that will have the effect of
26 physically precluding the construction of a development meeting
27 the criteria of subdivision (b) at the densities or with the
28 concessions or incentives permitted under this section, and may
29 request a meeting with the city, county, or city and county. If a
30 court finds that the refusal to grant a waiver or reduction of
31 development standards is in violation of this section, the court
32 shall award the plaintiff reasonable attorney's fees and costs of
33 suit. Nothing in this subdivision shall be interpreted to require a
34 local government to waive or reduce development standards if the
35 waiver or reduction would have a specific, adverse impact, as
36 defined in paragraph (2) of subdivision (d) of Section 65589.5,
37 upon health, safety, or the physical environment, and for which
38 there is no feasible method to satisfactorily mitigate or avoid the
39 specific adverse impact. Nothing in this subdivision shall be
40 interpreted to require a local government to waive or reduce

1 development standards that would have an adverse impact on any
2 real property that is listed in the California Register of Historical
3 Resources, or to grant any waiver or reduction that would be
4 contrary to state or federal law.

5 (f) For the purposes of this chapter, “density bonus” means a
6 density increase over the otherwise maximum allowable residential
7 density under the applicable zoning ordinance and land use element
8 of the general plan as of the date of application by the applicant
9 to the city, county, or city and county. The applicant may elect to
10 accept a lesser percentage of density bonus. The amount of density
11 bonus to which the applicant is entitled shall vary according to the
12 amount by which the percentage of affordable housing units
13 exceeds the percentage established in subdivision (b).

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

17	18 Percentage Low-Income Units	18 Percentage Density Bonus
19	10	20
20	11	21.5
21	12	23
22	13	24.5
23	14	26
24	15	27.5
25	17	30.5
26	18	32
27	19	33.5
28	20	35

29
30 (2) For housing developments meeting the criteria of
31 subparagraph (B) of paragraph (1) of subdivision (b), the density
32 bonus shall be calculated as follows:

33	34 Percentage Very Low Income Units	34 Percentage Density Bonus
35	5	20
36	6	22.5
37	7	25
38	8	27.5
39	9	30
40	10	32.5

1	Percentage Very Low Income Units	Percentage Density Bonus
2	11	35

3
4 (3) For housing developments meeting the criteria of
5 subparagraph (C) of paragraph (1) of subdivision (b), the density
6 bonus shall be 20 percent of the number of senior housing units.

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

10		
11	Percentage Moderate-Income Units	Percentage Density Bonus
12	10	5
13	11	6
14	12	7
15	13	8
16	14	9
17	15	10
18	16	11
19	17	12
20	18	13
21	19	14
22	20	15
23	21	16
24	22	17
25	23	18
26	24	19
27	25	20
28	26	21
29	27	22
30	28	23
31	29	24
32	30	25
33	31	26
34	32	27
35	33	28
36	34	29
37	35	30
38	36	31
39	37	32
40	38	33

1	Percentage Moderate-Income Units	Percentage Density Bonus
2	39	34
3	40	35

4

5 (5) All density calculations resulting in fractional units shall be
6 rounded up to the next whole number. The granting of a density
7 bonus shall not be interpreted, in and of itself, to require a general
8 plan amendment, local coastal plan amendment, zoning change,
9 or other discretionary approval.

10 (g) (1) When an applicant for a tentative subdivision map,
11 parcel map, or other residential development approval donates
12 land to a city, county, or city and county in accordance with this
13 subdivision, the applicant shall be entitled to a 15-percent increase
14 above the otherwise maximum allowable residential density under
15 the applicable zoning ordinance and land use element of the general
16 plan for the entire development, as follows:

17

18	Percentage Very Low Income	Percentage Density Bonus
19	10	15
20	11	16
21	12	17
22	13	18
23	14	19
24	15	20
25	16	21
26	17	22
27	18	23
28	19	24
29	20	25
30	21	26
31	22	27
32	23	28
33	24	29
34	25	30
35	26	31
36	27	32
37	28	33
38	29	34
39	30	35

40

1 (2) This increase shall be in addition to any increase in density
2 mandated by subdivision (b), up to a maximum combined mandated
3 density increase of 35 percent if an applicant seeks an increase
4 pursuant to both this subdivision and subdivision (b). All density
5 calculations resulting in fractional units shall be rounded up to the
6 next whole number. Nothing in this subdivision shall be construed
7 to enlarge or diminish the authority of a city, county, or city and
8 county to require a developer to donate land as a condition of
9 development. An applicant shall be eligible for the increased
10 density bonus described in this subdivision if all of the following
11 conditions are met:

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

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

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

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

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

1 (F) The land is transferred to the local agency or to a housing
2 developer approved by the local agency. The local agency may
3 require the applicant to identify and transfer the land to the
4 developer.

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

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

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

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

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

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

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

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

37 (3) Notwithstanding any requirement of this subdivision, a city,
38 county, or a city and county shall not be required to provide a
39 density bonus or concession for a child care facility if it finds,

1 based upon substantial evidence, that the community has adequate
2 child care facilities.

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

7 (i) “Housing development,” as used in this section, means a
8 development project for five or more residential units. For the
9 purposes of this section, “housing development” also includes a
10 subdivision or common interest development, as defined in Section
11 1351 of the Civil Code, approved by a city, county, or city and
12 county and consists of residential units or unimproved residential
13 lots and either a project to substantially rehabilitate and convert
14 an existing commercial building to residential use or the substantial
15 rehabilitation of an existing multifamily dwelling, as defined in
16 subdivision (d) of Section 65863.4, where the result of the
17 rehabilitation would be a net increase in available residential units.
18 *For the purpose of calculating a density bonus, the residential*
19 *units shall be on contiguous sites that are the subject of one*
20 *development application.* The density bonus shall be permitted in
21 geographic areas of the housing development other than the areas
22 where the units for the lower income households are located.

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

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

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

39 (2) Approval of mixed use zoning in conjunction with the
40 housing project if commercial, office, industrial, or other land uses

1 will reduce the cost of the housing development and if the
2 commercial, office, industrial, or other land uses are compatible
3 with the housing project and the existing or planned development
4 in the area where the proposed housing project will be located.

5 (3) Other incentives or concessions proposed by the developer
6 or the city, county, or city and county that result in identifiable,
7 financially sufficient, and actual cost reductions.

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

12 (m) Nothing in this section shall be construed to supersede or
13 in any way alter or lessen the effect or application of the California
14 Coastal Act (Division 20 (commencing with Section 30000) of
15 the Public Resources Code).

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

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

25 (1) “Development standard” includes a site or construction
26 condition, ~~such as including, but not limited to,~~ a height limitation,
27 a setback requirement, a floor area ratio, an onsite open-space
28 requirement, or a parking ratio that applies to a residential
29 development pursuant to any ordinance, general plan element,
30 specific plan, *charter*, or other local condition, law, policy,
31 resolution, or regulation, ~~the application of which would physically~~
32 ~~preclude the construction of the housing development at the density~~
33 ~~allowed pursuant to this section.~~

34 (2) “Maximum allowable residential density” means the density
35 allowed under the zoning ordinance and land use element of the
36 general plan, or if a range of density is permitted, means the
37 maximum allowable density for the specific zoning range and land
38 use element of the general plan applicable to the project.

39 (p) (1) Upon the request of the developer, no city, county, or
40 city and county shall require a vehicular parking ratio, inclusive

1 of handicapped and guest parking, of a development meeting the
2 criteria of subdivision (b), that exceeds the following ratios:
3 (A) Zero to one bedroom: one onsite parking space.
4 (B) Two to three bedrooms: two onsite parking spaces.
5 (C) Four and more bedrooms: two and one-half parking spaces.
6 (2) If the total number of parking spaces required for a
7 development is other than a whole number, the number shall be
8 rounded up to the next whole number. For purposes of this
9 subdivision, a development may provide “onsite parking” through
10 tandem parking or uncovered parking, but not through onstreet
11 parking.
12 (3) This subdivision shall apply to a development that meets
13 the requirements of subdivision (b) but only at the request of the
14 applicant. An applicant may request ~~a waiver of parking~~ *parking*
15 *incentives or concessions beyond those provided in this section*
16 ~~pursuant to subdivision (d), in addition to the request made~~
17 ~~pursuant to this subdivision:~~ *to subdivision (d).*

O