

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Mullin

February 6, 2003

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

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as introduced, Mullin. Density bonuses: child care facilities.

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 or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements.

This bill would also require a developer of housing to make adequate provision for child care facilities.

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) When an applicant proposes a housing
4 development within the jurisdiction of a city, county, or city and
5 county, that local government shall provide the applicant
6 incentives or concessions for the production of housing units *and*

1 *child care facilities* as prescribed in this chapter. All cities,
2 counties, or cities and counties shall adopt an ordinance that
3 specifies how compliance with this section will be implemented.

4 (b) A city, county, or city and county shall either grant a density
5 bonus and at least one of the concessions or incentives identified
6 in subdivision ~~(j)~~ (k), or provide other incentives or concessions of
7 equivalent financial value based upon the land cost per dwelling
8 unit, when the applicant for the housing development agrees or
9 proposes to *make adequate provision for child care facilities and*
10 to construct at least any one of the following:

11 (1) Twenty percent of the total units of a housing development
12 for lower income households, as defined in Section 50079.5 of the
13 Health and Safety Code.

14 (2) Ten percent of the total units of a housing development for
15 very low income households, as defined in Section 50105 of the
16 Health and Safety Code.

17 (3) Fifty percent of the total dwelling units of a housing
18 development for qualifying residents, as defined in Section 51.3
19 of the Civil Code.

20 (4) Twenty percent of the total dwelling units in a
21 condominium project as defined in subdivision (f) of Section 1351
22 of the Civil Code, for persons and families of moderate income,
23 as defined in Section 50093 of the Health and Safety Code.

24 The city, county, or city and county shall grant the additional
25 concession or incentive required by this subdivision unless the
26 city, county, or city and county makes a written finding, based
27 upon substantial evidence, that the additional concession or
28 incentive is not required in order to provide for affordable housing
29 costs, as defined in Section 50052.5 of the Health and Safety Code,
30 or for rents for the targeted units to be set as specified in
31 subdivision (c).

32 (c) (1) An applicant shall agree to, and the city, county, or city
33 and county shall ensure, continued affordability of all lower
34 income density bonus units for 30 years or a longer period of time
35 if required by the construction or mortgage financing assistance
36 program, mortgage insurance program, or rental subsidy program.
37 Those units targeted for lower income households, as defined in
38 Section 50079.5 of the Health and Safety Code, shall be affordable
39 at a rent that does not exceed 30 percent of 60 percent of area
40 median income. Those units targeted for very low income

households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant 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 either of the following:

(1) The concession or incentive is not required in order 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).

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

The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or

1 avoid the specific adverse impact. Nothing in this subdivision shall
2 be interpreted to require a local government to grant an incentive
3 or concession that would have an adverse impact on any real
4 property that is listed in the California Register of Historical
5 Resources. The city, county, or city and county shall establish
6 procedures for carrying out this section, that shall include
7 legislative body approval of the means of compliance with this
8 section. The city, county, or city and county shall also establish
9 procedures for waiving or modifying development and zoning
10 standards that would otherwise inhibit the utilization of the density
11 bonus on specific sites. These procedures shall include, but not be
12 limited to, such items as minimum lot size, side yard setbacks, and
13 placement of public works improvements.

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

35 (f) The applicant shall show that the waiver or modification is
36 necessary to make the housing units economically feasible.

37 (g) (1) For the purposes of this chapter, except as provided in
38 paragraph (2), "density bonus" means a density increase of at least
39 25 percent, unless a lesser percentage is elected by the applicant,
40 over the otherwise maximum allowable residential density under

1 the applicable zoning ordinance and land use element of the
2 general plan as of the date of application by the applicant to the
3 city, county, or city and county. All density calculations resulting
4 in fractional units shall be rounded up to the next whole number.
5 The granting of a density bonus shall not be interpreted, in and of
6 itself, to require a general plan amendment, local coastal plan
7 amendment, zoning change, or other discretionary approval. The
8 density bonus shall not be included when determining the number
9 of housing units which is equal to 10, 20, or 50 percent of the total.
10 The density bonus shall apply to housing developments consisting
11 of five or more dwelling units.

12 (2) For the purposes of this chapter, if a development does not
13 meet the requirements of paragraph (1), (2), or (3) of subdivision
14 (b), but the applicant agrees or proposes to construct a
15 condominium project as defined in subdivision (f) of Section 1351
16 of the Civil Code, in which at least 20 percent of the total dwelling
17 units are reserved for persons and families of moderate income, as
18 defined in Section 50093 of the Health and Safety Code, a “density
19 bonus” of at least 10 percent shall be granted, unless a lesser
20 percentage is elected by the applicant, over the otherwise
21 maximum allowable residential density under the applicable
22 zoning ordinance and land use element of the general plan as of the
23 date of application by the applicant to the city, county, or city and
24 county. All density calculations resulting in fractional units shall
25 be rounded up to the next whole number. The granting of a density
26 bonus shall not be interpreted, in and of itself, to require a general
27 plan amendment, local coastal plan amendment, zoning change, or
28 other discretionary approval. The density bonus shall not be
29 included when determining the number of housing units which is
30 equal to 20 percent of the total. The density bonus shall apply to
31 housing developments consisting of five or more dwelling units.

32 (h) *“Child care facility,” as used in this section, means a*
33 *facility operated and maintained under this section for the*
34 *residential care of children as defined under applicable state*
35 *licensing requirements for the facility.*

36 (i) *“Housing development,” as used in this section, means one*
37 *or more groups of projects for residential units constructed in the*
38 *planned development of a city, county, or city and county. For the*
39 *purposes of this section, “housing development” also includes*
40 *either (1) a project to substantially rehabilitate and convert an*



1 existing commercial building to residential use, or (2) the
2 substantial rehabilitation of an existing multifamily dwelling, as
3 defined in subdivision (d) of Section 65863.4, where the result of
4 the rehabilitation would be a net increase in available residential
5 units. For the purpose of calculating a density bonus, the
6 residential units do not have to be based upon individual
7 subdivision maps or parcels. The density bonus shall be permitted
8 in geographic areas of the housing development other than the
9 areas where the units for the lower income households are located.

10 ~~(i)~~

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

16 ~~(j)~~

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

19 (1) A reduction in site development standards or a modification
20 of zoning code requirements or architectural design requirements
21 that exceed the minimum building standards approved by the
22 California Building Standards Commission as provided in Part 2.5
23 (commencing with Section 18901) of Division 13 of the Health
24 and Safety Code, including, but not limited to, a reduction in
25 setback and square footage requirements and in the ratio of
26 vehicular parking spaces that would otherwise be required.

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

33 (3) Other regulatory incentives or concessions proposed by the
34 developer or the city, county, or city and county that result in
35 identifiable and actual cost reductions.

36 This subdivision does not limit or require the provision of direct
37 financial incentives for the housing development, including the
38 provision of publicly owned land, by the city, county, or city and
39 county, or the waiver of fees or dedication requirements.

40 ~~(k)~~

1 (l) If an applicant agrees to construct both 20 percent of the total
2 units for lower income households and 10 percent of the total units
3 for very low income households, the developer is entitled to only
4 one density bonus and at least one additional concession or
5 incentive identified in Section 65913.4 under this section although
6 the city, city and county, or county may, at its discretion, grant
7 more than one density bonus.

8 ~~(l)~~

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

13 ~~(m)~~

14 (n) A local agency may charge a fee to reimburse it for costs it
15 incurs as a result of amendments to this section enacted during the
16 2001–02 Regular Session of the Legislature.

17 ~~(n)~~

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

20 (1) “Development standard” means any ordinance, general
21 plan element, specific plan, charter amendment, or other local
22 condition, law, policy, resolution, or regulation.

23 (2) “Maximum allowable residential density” means the
24 density allowed under the zoning ordinance, or if a range of
25 density is permitted, means the maximum allowable density for
26 the specific zoning range applicable to the project.

