

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 24, 2003

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

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 amended, 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 an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions.

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

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

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

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

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

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

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

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

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional 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).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower

1 income density bonus units for 30 years or a longer period of time
2 if required by the construction or mortgage financing assistance
3 program, mortgage insurance program, or rental subsidy program.
4 Those units targeted for lower income households, as defined in
5 Section 50079.5 of the Health and Safety Code, shall be affordable
6 at a rent that does not exceed 30 percent of 60 percent of area
7 median income. Those units targeted for very low income
8 households, as defined in Section 50105 of the Health and Safety
9 Code, shall be affordable at a rent that does not exceed 30 percent
10 of 50 percent of area median income.

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

17 (d) An applicant may submit to a city, county, or city and
18 county a proposal for the specific incentives or concessions that the
19 applicant requests pursuant to this section, and may request a
20 meeting with the city, county, or city and county. The city, county,
21 or city and county shall grant the concession or incentive requested
22 by the applicant unless the city, county, or city and county makes
23 a written finding, based upon substantial evidence, of either of the
24 following:

25 (1) The concession or incentive is not required in order to
26 provide for affordable housing costs, as defined in Section
27 50052.5 of the Health and Safety Code, or for rents for the targeted
28 units to be set as specified in subdivision (c).

29 (2) The concession or incentive would have a specific adverse
30 impact, as defined in paragraph (2) of subdivision (d) of Section
31 65589.5, upon public health and safety or the physical
32 environment or on any real property that is listed in the California
33 Register of Historical Resources and for which there is no feasible
34 method to satisfactorily mitigate or avoid the specific adverse
35 impact without rendering the development unaffordable to low-
36 and moderate-income households.

37 The applicant may initiate judicial proceedings if the city,
38 county, or city and county refuses to grant a requested density
39 bonus, incentive, or concession. If a court finds that the refusal to
40 grant a requested density bonus, incentive, or concession is in

1 violation of this section, the court shall award the plaintiff
2 reasonable attorney's fees and costs of suit. Nothing in this
3 subdivision shall be interpreted to require a local government to
4 grant an incentive or concession that has a specific, adverse
5 impact, as defined in paragraph (2) of subdivision (d) of Section
6 65589.5, upon health, safety, or the physical environment, and for
7 which there is no feasible method to satisfactorily mitigate or
8 avoid the specific adverse impact. Nothing in this subdivision shall
9 be interpreted to require a local government to grant an incentive
10 or concession that would have an adverse impact on any real
11 property that is listed in the California Register of Historical
12 Resources. The city, county, or city and county shall establish
13 procedures for carrying out this section, that shall include
14 legislative body approval of the means of compliance with this
15 section. The city, county, or city and county shall also establish
16 procedures for waiving or modifying development and zoning
17 standards that would otherwise inhibit the utilization of the density
18 bonus on specific sites. These procedures shall include, but not be
19 limited to, such items as minimum lot size, side yard setbacks, and
20 placement of public works improvements.

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



1 real property that is listed in the California Register of Historical
2 Resources.

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

5 (g) (1) For the purposes of this chapter, except as provided in
6 paragraph (2), “density bonus” means a density increase of at least
7 25 percent, unless a lesser percentage is elected by the applicant,
8 over the otherwise maximum allowable residential density under
9 the applicable zoning ordinance and land use element of the
10 general plan as of the date of application by the applicant to the
11 city, county, or city and county. All density calculations resulting
12 in fractional units shall be rounded up to the next whole number.
13 The granting of a density bonus shall not be interpreted, in and of
14 itself, to require a general plan amendment, local coastal plan
15 amendment, zoning change, or other discretionary approval. The
16 density bonus shall not be included when determining the number
17 of housing units which is equal to 10, 20, or 50 percent of the total.
18 The density bonus shall apply to housing developments consisting
19 of five or more dwelling units.

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

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

~~(A) An additional density bonus of an amount that contributes significantly to the economic feasibility of the child care facility.~~

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

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

~~(2) The city, county, or city and county may require, as a condition of granting the density bonus or additional concession or incentive, that the applicant demonstrate that an additional density bonus or other concession or incentive is required to make the child care facility economically feasible and may require conditions to ensure the viability and continued use of the child care facility.~~

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

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

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

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

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

5 (i) “Housing development,” as used in this section, means one
6 or more groups of projects for residential units constructed in the
7 planned development of a city, county, or city and county. For the
8 purposes of this section, “housing development” also includes
9 either (1) a project to substantially rehabilitate and convert an
10 existing commercial building to residential use, or (2) the
11 substantial rehabilitation of an existing multifamily dwelling, as
12 defined in subdivision (d) of Section 65863.4, where the result of
13 the rehabilitation would be a net increase in available residential
14 units. For the purpose of calculating a density bonus, the
15 residential units do not have to be based upon individual
16 subdivision maps or parcels. The density bonus shall be permitted
17 in geographic areas of the housing development other than the
18 areas where the units for the lower income households are located.

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

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

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

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

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

4 This subdivision does not limit or require the provision of direct
5 financial incentives for the housing development, including the
6 provision of publicly owned land, by the city, county, or city and
7 county, or the waiver of fees or dedication requirements.

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

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

19 (n) A local agency may charge a fee to reimburse it for costs it
20 incurs as a result of amendments to this section enacted during the
21 2001–02 Regular Session of the Legislature.

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

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

27 (2) “Maximum allowable residential density” means the
28 density allowed under the zoning ordinance, or if a range of
29 density is permitted, means the maximum allowable density for
30 the specific zoning range applicable to the project.

