

Introduced by Senator Padilla

February 16, 2023

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

LEGISLATIVE COUNSEL'S DIGEST

SB 713, as introduced, Padilla. Planning and zoning: density bonuses: preemption.

Existing law, commonly referred to as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development within the city or county with a density bonus and other incentives or concessions, as specified, if the developer agrees to construct certain types of housing. Existing law requires a city, county, or city and county to adopt an ordinance specifying how compliance with the Density Bonus Law will be implemented and, except as provided, specifies that failure to adopt an ordinance does not relieve the city, county, or city and county from compliance with that law.

This bill would specify that the provisions of the Density Bonus Law prevail in the event of a conflict between that law and an ordinance, regulation, or other local law enacted by initiative.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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. The Legislature finds and declares all of the
2 following:

3 (a) The Legislature can preempt local initiatives that conflict
4 with state law.

5 (b) The Density Bonus Law is critical to ensure the production
6 of adequate housing to combat the state's housing crisis.

7 (c) It is the intent of the Legislature to clarify that the provisions
8 of the Density Bonus Law prevail when in conflict with local
9 initiatives.

10 SEC. 2. Section 65915 of the Government Code, is amended
11 to read

12 65915. (a) (1) When an applicant seeks a density bonus for
13 a housing development within, or for the donation of land for
14 housing within, the jurisdiction of a city, county, or city and county,
15 that local government shall comply with this section. A city,
16 county, or city and county shall adopt an ordinance that specifies
17 how compliance with this section will be implemented. Except as
18 otherwise provided in subdivision (s), failure to adopt an ordinance
19 shall not relieve a city, county, or city and county from complying
20 with this section.

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

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

34 (A) Adopt procedures and timelines for processing a density
35 bonus application.

36 (B) Provide a list of all documents and information required to
37 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), if an applicant for a housing
33 development seeks and agrees to construct a housing development,
34 excluding any units permitted by the density bonus awarded
35 pursuant to this section, that will contain at least any one of the
36 following:

37 (A) Ten percent of the total units of a housing development,
38 including a shared housing building development, for rental or
39 sale to lower income households, as defined in Section 50079.5
40 of the Health and Safety Code.

1 (B) Five percent of the total units of a housing development,
2 including a shared housing building development, for rental or
3 sale to very low income households, as defined in Section 50105
4 of the Health and Safety Code.

5 (C) A senior citizen housing development, as defined in Sections
6 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
7 residency based on age requirements for housing for older persons
8 pursuant to Section 798.76 or 799.5 of the Civil Code. For purposes
9 of this subparagraph, “development” includes a shared housing
10 building development.

11 (D) Ten percent of the total dwelling units of a housing
12 development are sold to persons and families of moderate income,
13 as defined in Section 50093 of the Health and Safety Code,
14 provided that all units in the development are offered to the public
15 for purchase.

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

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

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

1 sufficient students enrolled in an institution of higher education
2 to fill all units in the student housing development.

3 (II) The applicable 20-percent units will be used for lower
4 income students.

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

9 (IV) The development will provide priority for the applicable
10 affordable units for lower income students experiencing
11 homelessness. A homeless service provider, as defined in paragraph
12 (3) of subdivision (e) of Section 103577 of the Health and Safety
13 Code, or institution of higher education that has knowledge of a
14 person's homeless status may verify a person's status as homeless
15 for purposes of this subclause.

16 (ii) For purposes of calculating a density bonus granted pursuant
17 to this subparagraph, the term "unit" as used in this section means
18 one rental bed and its pro rata share of associated common area
19 facilities. The units described in this subparagraph shall be subject
20 to a recorded affordability restriction of 55 years.

21 (G) One hundred percent of all units in the development,
22 including total units and density bonus units, but exclusive of a
23 manager's unit or units, are for lower income households, as
24 defined by Section 50079.5 of the Health and Safety Code, except
25 that up to 20 percent of the units in the development, including
26 total units and density bonus units, may be for moderate-income
27 households, as defined in Section 50053 of the Health and Safety
28 Code. For purposes of this subparagraph, "development" includes
29 a shared housing building development.

30 (2) For purposes of calculating the amount of the density bonus
31 pursuant to subdivision (f), an applicant who requests a density
32 bonus pursuant to this subdivision shall elect whether the bonus
33 shall be awarded on the basis of subparagraph (A), (B), (C), (D),
34 (E), (F), or (G) of paragraph (1).

35 (c) (1) (A) An applicant shall agree to, and the city, county,
36 or city and county shall ensure, the continued affordability of all
37 very low and low-income rental units that qualified the applicant
38 for the award of the density bonus for 55 years or a longer period
39 of time if required by the construction or mortgage financing

1 assistance program, mortgage insurance program, or rental subsidy
2 program.

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

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

10 (I) The rent for at least 20 percent of the units in the
11 development shall be set at an affordable rent, as defined in Section
12 50053 of the Health and Safety Code.

13 (II) The rent for the remaining units in the development shall
14 be set at an amount consistent with the maximum rent levels for
15 lower income households, as those rents and incomes are
16 determined by the California Tax Credit Allocation Committee.

17 (2) (A) An applicant shall agree to ensure, and the city, county,
18 or city and county shall ensure, that a for-sale unit that qualified
19 the applicant for the award of the density bonus meets either of
20 the following conditions:

21 (i) The unit is initially occupied by a person or family of very
22 low, low, or moderate income, as required, and it is offered at an
23 affordable housing cost, as that cost is defined in Section 50052.5
24 of the Health and Safety Code and is subject to an equity sharing
25 agreement.

26 (ii) The unit is purchased by a qualified nonprofit housing
27 corporation pursuant to a recorded contract that satisfies all of the
28 requirements specified in paragraph (10) of subdivision (a) of
29 Section 402.1 of the Revenue and Taxation Code and that includes
30 all of the following:

31 (I) A repurchase option that requires a subsequent purchaser of
32 the property that desires to resell or convey the property to offer
33 the qualified nonprofit corporation the right to repurchase the
34 property prior to selling or conveying that property to any other
35 purchaser.

36 (II) An equity sharing agreement.

37 (III) Affordability restrictions on the sale and conveyance of
38 the property that ensure that the property will be preserved for
39 lower income housing for at least 45 years for owner-occupied
40 housing units and will be sold or resold only to persons or families

1 of very low, low, or moderate income, as defined in Section
2 50052.5 of the Health and Safety Code.

3 (B) For purposes of this paragraph, a “qualified nonprofit
4 housing corporation” is a nonprofit housing corporation organized
5 pursuant to Section 501(c)(3) of the Internal Revenue Code that
6 has received a welfare exemption under Section 214.15 of the
7 Revenue and Taxation Code for properties intended to be sold to
8 low-income families who participate in a special no-interest loan
9 program.

10 (C) The local government shall enforce an equity sharing
11 agreement required pursuant to clause (i) or (ii) of subparagraph
12 (A), unless it is in conflict with the requirements of another public
13 funding source or law or may defer to the recapture provisions of
14 the public funding source. The following apply to the equity
15 sharing agreement:

16 (i) Upon resale, the seller of the unit shall retain the value of
17 any improvements, the downpayment, and the seller’s proportionate
18 share of appreciation.

19 (ii) Except as provided in clause (v), the local government shall
20 recapture any initial subsidy, as defined in clause (iii), and its
21 proportionate share of appreciation, as defined in clause (iv), which
22 amount shall be used within five years for any of the purposes
23 described in subdivision (e) of Section 33334.2 of the Health and
24 Safety Code that promote home ownership.

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

32 (iv) For purposes of this subdivision, the local government’s
33 proportionate share of appreciation shall be equal to the ratio of
34 the local government’s initial subsidy to the fair market value of
35 the home at the time of initial sale.

36 (v) If the unit is purchased or developed by a qualified nonprofit
37 housing corporation pursuant to clause (ii) of subparagraph (A)
38 the local government may enter into a contract with the qualified
39 nonprofit housing corporation under which the qualified nonprofit
40 housing corporation would recapture any initial subsidy and its

1 proportionate share of appreciation if the qualified nonprofit
2 housing corporation is required to use 100 percent of the proceeds
3 to promote homeownership for lower income households as defined
4 by Health and Safety Code Section 50079.5 within the jurisdiction
5 of the local government.

6 (3) (A) An applicant shall be ineligible for a density bonus or
7 any other incentives or concessions under this section if the housing
8 development is proposed on any property that includes a parcel or
9 parcels on which rental dwelling units are or, if the dwelling units
10 have been vacated or demolished in the five-year period preceding
11 the application, have been subject to a recorded covenant,
12 ordinance, or law that restricts rents to levels affordable to persons
13 and families of lower or very low income; subject to any other
14 form of rent or price control through a public entity's valid exercise
15 of its police power; or occupied by lower or very low income
16 households, unless the proposed housing development replaces
17 those units, and either of the following applies:

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

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

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

26 (i) If any dwelling units described in subparagraph (A) are
27 occupied on the date of application, the proposed housing
28 development shall provide at least the same number of units of
29 equivalent size to be made available at affordable rent or affordable
30 housing cost to, and occupied by, persons and families in the same
31 or lower income category as those households in occupancy. If
32 the income category of the household in occupancy is not known,
33 it shall be rebuttably presumed that lower income renter households
34 occupied these units in the same proportion of lower income renter
35 households to all renter households within the jurisdiction, as
36 determined by the most recently available data from the United
37 States Department of Housing and Urban Development's
38 Comprehensive Housing Affordability Strategy database. For
39 unoccupied dwelling units described in subparagraph (A) in a
40 development with occupied units, the proposed housing

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

18 (ii) If all dwelling units described in subparagraph (A) have
 19 been vacated or demolished within the five-year period preceding
 20 the application, the proposed housing development shall provide
 21 at least the same number of units of equivalent size as existed at
 22 the highpoint of those units in the five-year period preceding the
 23 application to be made available at affordable rent or affordable
 24 housing cost to, and occupied by, persons and families in the same
 25 or lower income category as those persons and families in
 26 occupancy at that time, if known. If the incomes of the persons
 27 and families in occupancy at the highpoint is not known, it shall
 28 be rebuttably presumed that low-income and very low income
 29 renter households occupied these units in the same proportion of
 30 low-income and very low income renter households to all renter
 31 households within the jurisdiction, as determined by the most
 32 recently available data from the United States Department of
 33 Housing and Urban Development's Comprehensive Housing
 34 Affordability Strategy database. All replacement calculations
 35 resulting in fractional units shall be rounded up to the next whole
 36 number. If the replacement units will be rental dwelling units,
 37 these units shall be subject to a recorded affordability restriction
 38 for at least 55 years. If the proposed development is for-sale units,
 39 the units replaced shall be subject to paragraph (2).

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

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

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

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

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, 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).

1 (B) The concession or incentive would have a specific, adverse
2 impact, as defined in paragraph (2) of subdivision (d) of Section
3 65589.5, upon public health and safety or on any real property that
4 is listed in the California Register of Historical Resources and for
5 which there is no feasible method to satisfactorily mitigate or avoid
6 the specific, adverse impact without rendering the development
7 unaffordable to low-income and moderate-income households.

8 (C) The concession or incentive would be contrary to state or
9 federal law.

10 (2) The applicant shall receive the following number of
11 incentives or concessions:

12 (A) One incentive or concession for projects that include at least
13 10 percent of the total units for lower income households, at least
14 5 percent for very low income households, or at least 10 percent
15 for persons and families of moderate income in a development in
16 which the units are for sale.

17 (B) Two incentives or concessions for projects that include at
18 least 17 percent of the total units for lower income households, at
19 least 10 percent for very low income households, or at least 20
20 percent for persons and families of moderate income in a
21 development in which the units are for sale.

22 (C) Three incentives or concessions for projects that include at
23 least 24 percent of the total units for lower income households, at
24 least 15 percent for very low income households, or at least 30
25 percent for persons and families of moderate income in a
26 development in which the units are for sale.

27 (D) Four incentives or concessions for a project meeting the
28 criteria of subparagraph (G) of paragraph (1) of subdivision (b).
29 If the project is located within one-half mile of a major transit stop
30 or is located in a very low vehicle travel area in a designated
31 county, the applicant shall also receive a height increase of up to
32 three additional stories, or 33 feet.

33 (E) One incentive or concession for projects that include at least
34 20 percent of the total units for lower income students in a student
35 housing development.

36 (3) The applicant may initiate judicial proceedings if the city,
37 county, or city and county refuses to grant a requested density
38 bonus, incentive, or concession. If a court finds that the refusal to
39 grant a requested density bonus, incentive, or concession is in
40 violation of this section, the court shall award the plaintiff

1 reasonable attorney's fees and costs of suit. This subdivision shall
2 not be interpreted to require a local government to grant an
3 incentive or concession that has a specific, adverse impact, as
4 defined in paragraph (2) of subdivision (d) of Section 65589.5,
5 upon health or safety, and for which there is no feasible method
6 to satisfactorily mitigate or avoid the specific adverse impact. This
7 subdivision shall not be interpreted to require a local government
8 to grant an incentive or concession that would have an adverse
9 impact on any real property that is listed in the California Register
10 of Historical Resources. The city, county, or city and county shall
11 establish procedures for carrying out this section that shall include
12 legislative body approval of the means of compliance with this
13 section.

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

16 (e) (1) In no case may a city, county, or city and county apply
17 any development standard that will have the effect of physically
18 precluding the construction of a development meeting the criteria
19 of subdivision (b) at the densities or with the concessions or
20 incentives permitted by this section. Subject to paragraph (3), an
21 applicant may submit to a city, county, or city and county a
22 proposal for the waiver or reduction of development standards that
23 will have the effect of physically precluding the construction of a
24 development meeting the criteria of subdivision (b) at the densities
25 or with the concessions or incentives permitted under this section,
26 and may request a meeting with the city, county, or city and county.
27 If a court finds that the refusal to grant a waiver or reduction of
28 development standards is in violation of this section, the court
29 shall award the plaintiff reasonable attorney's fees and costs of
30 suit. This subdivision shall not be interpreted to require a local
31 government to waive or reduce development standards if the waiver
32 or reduction would have a specific, adverse impact, as defined in
33 paragraph (2) of subdivision (d) of Section 65589.5, upon health
34 or safety, and for which there is no feasible method to satisfactorily
35 mitigate or avoid the specific adverse impact. This subdivision
36 shall not be interpreted to require a local government to waive or
37 reduce development standards that would have an adverse impact
38 on any real property that is listed in the California Register of
39 Historical Resources, or to grant any waiver or reduction that would
40 be contrary to state or federal law.

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

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

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

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

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	38.75
22	42.5

1	23	46.25
2	24	50

3
 4 (2) For housing developments meeting the criteria of
 5 subparagraph (B) of paragraph (1) of subdivision (b), the density
 6 bonus shall be calculated as follows:

7	8	9	10	11	12	13	14	15	16	17	18	19	20
	Percentage Very Low Income Units			Percentage Density Bonus									
	5			20									
	6			22.5									
	7			25									
	8			27.5									
	9			30									
	10			32.5									
	11			35									
	12			38.75									
	13			42.5									
	14			46.25									
	15			50									

21 (3) (A) For housing developments meeting the criteria of
 22 subparagraph (C) of paragraph (1) of subdivision (b), the density
 23 bonus shall be 20 percent of the number of senior housing units.

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

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

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

34 (i) Except as otherwise provided in clauses (ii) and (iii), the
 35 density bonus shall be 80 percent of the number of units for lower
 36 income households.

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

(iii) If the housing development is located in a very low vehicle travel area within a designated county, 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
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35
41	38.75

1	42	42.5
2	43	46.25
3	44	50

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 require, or be interpreted, in and of itself, to require
8 a general plan amendment, local coastal plan amendment, zoning
9 change, 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 for
15 the entire development, as follows:

16

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

39

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

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

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

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

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

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which 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 childcare facility that will be located on the premises
15 of, as part of, or adjacent to, the project, the city, county, or city
16 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 childcare facility.

20 (B) An additional concession or incentive that contributes
21 significantly to the economic feasibility of the construction of the
22 childcare 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 childcare 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 childcare facility, the children
31 of very low income households, lower income households, or
32 families of moderate income shall equal a percentage that is equal
33 to or greater than the percentage of dwelling units that are required
34 for very low income households, lower income households, or
35 families of moderate income pursuant to subdivision (b).

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

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

5 (i) “Housing development,” as used in this section, means a
6 development project for five or more residential units, including
7 mixed-use developments. For the purposes of this section, “housing
8 development” also includes a subdivision or common interest
9 development, as defined in Section 4100 of the Civil Code,
10 approved by a city, county, or city and county and consists of
11 residential units or unimproved residential lots and either a project
12 to substantially rehabilitate and convert an existing commercial
13 building to residential use or the substantial rehabilitation of an
14 existing multifamily dwelling, as defined in subdivision (d) of
15 Section 65863.4, where the result of the rehabilitation would be a
16 net increase in available residential units. For the purpose of
17 calculating a density bonus, the residential units shall be on
18 contiguous sites that are the subject of one development
19 application, but do not have to be based upon individual
20 subdivision maps or parcels. The density bonus shall be permitted
21 in geographic areas of the housing development other than the
22 areas where the units for the lower income households are located.

23 (j) (1) The granting of a concession or incentive shall not require
24 or be interpreted, in and of itself, to require a general plan
25 amendment, local coastal plan amendment, zoning change, study,
26 or other discretionary approval. For purposes of this subdivision,
27 “study” does not include reasonable documentation to establish
28 eligibility for the concession or incentive or to demonstrate that
29 the incentive or concession meets the definition set forth in
30 subdivision (k). This provision is declaratory of existing law.

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

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

37 (1) A reduction in site development standards or a modification
38 of zoning code requirements or architectural design requirements
39 that exceed the minimum building standards approved by the
40 California Building Standards Commission as provided in Part 2.5

(commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results 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).

(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.

1 (o) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Designated county” includes the Counties of Alameda,
4 Contra Costa, Los Angeles, Marin, Napa, Orange, Riverside,
5 Sacramento, San Bernardino, San Diego, San Francisco, San
6 Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, and Ventura.

7 (2) “Development standard” includes a site or construction
8 condition, including, but not limited to, a height limitation, a
9 setback requirement, a floor area ratio, an onsite open-space
10 requirement, a minimum lot area per unit requirement, or a parking
11 ratio that applies to a residential development pursuant to any
12 ordinance, general plan element, specific plan, charter, or other
13 local condition, law, policy, resolution, or regulation.

14 (3) “Located within one-half mile of a major transit stop” means
15 that any point on a proposed development, for which an applicant
16 seeks a density bonus, other incentives or concessions, waivers or
17 reductions of development standards, or a vehicular parking ratio
18 pursuant to this section, is within one-half mile of any point on
19 the property on which a major transit stop is located, including
20 any parking lot owned by the transit authority or other local agency
21 operating the major transit stop.

22 (4) “Lower income student” means a student who has a
23 household income and asset level that does not exceed the level
24 for Cal Grant A or Cal Grant B award recipients as set forth in
25 paragraph (1) of subdivision (k) of Section 69432.7 of the
26 Education Code. The eligibility of a student to occupy a unit for
27 lower income students under this section shall be verified by an
28 affidavit, award letter, or letter of eligibility provided by the
29 institution of higher education in which the student is enrolled or
30 by the California Student Aid Commission that the student receives
31 or is eligible for financial aid, including an institutional grant or
32 fee waiver from the college or university, the California Student
33 Aid Commission, or the federal government.

34 (5) “Major transit stop” has the same meaning as defined in
35 subdivision (b) of Section 21155 of the Public Resources Code.

36 (6) “Maximum allowable residential density” or “base density”
37 means the maximum number of units allowed under the zoning
38 ordinance, specific plan, or land use element of the general plan,
39 or, if a range of density is permitted, means the maximum number
40 of units allowed by the specific zoning range, specific plan, or land

1 use element of the general plan applicable to the project. If the
2 density allowed under the zoning ordinance is inconsistent with
3 the density allowed under the land use element of the general plan
4 or specific plan, the greater shall prevail. Density shall be
5 determined using dwelling units per acre. However, if the
6 applicable zoning ordinance, specific plan, or land use element of
7 the general plan does not provide a dwelling-units-per-acre standard
8 for density, then the local agency shall calculate the number of
9 units by:

10 (A) Estimating the realistic development capacity of the site
11 based on the objective development standards applicable to the
12 project, including, but not limited to, floor area ratio, site coverage,
13 maximum building height and number of stories, building setbacks
14 and stepbacks, public and private open space requirements,
15 minimum percentage or square footage of any nonresidential
16 component, and parking requirements, unless not required for the
17 base project. Parking requirements shall include considerations
18 regarding number of spaces, location, design, type, and circulation.
19 A developer may provide a base density study and the local agency
20 shall accept it, provided that it includes all applicable objective
21 development standards.

22 (B) Maintaining the same average unit size and other project
23 details relevant to the base density study, excepting those that may
24 be modified by waiver or concession to accommodate the bonus
25 units, in the proposed project as in the study.

26 (7) (A) (i) “Shared housing building” means a residential or
27 mixed-use structure, with five or more shared housing units and
28 one or more common kitchens and dining areas designed for
29 permanent residence of more than 30 days by its tenants. The
30 kitchens and dining areas within the shared housing building shall
31 be able to adequately accommodate all residents. If a local
32 ordinance further restricts the attributes of a shared housing
33 building beyond the requirements established in this section, the
34 local definition shall apply to the extent that it does not conflict
35 with the requirements of this section.

36 (ii) A “shared housing building” may include other dwelling
37 units that are not shared housing units, provided that those dwelling
38 units do not occupy more than 25 percent of the floor area of the
39 shared housing building. A shared housing building may include
40 100 percent shared housing units.

(B) “Shared housing unit” means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the “minimum room area” specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of “guestroom” in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

(8) (A) “Total units” or “total dwelling units” means a calculation of the number of units that:

(i) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(ii) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(B) For purposes of calculating a density bonus granted pursuant to this section for a shared housing building, “unit” means one shared housing unit and its pro rata share of associated common area facilities.

(9) “Very low vehicle travel area” means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, “area” may include a travel analysis zone, hexagon, or grid. For the purposes of determining “regional vehicle miles traveled per capita” pursuant to this paragraph, a “region” is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

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

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

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

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

5 (2) (A) Notwithstanding paragraph (1), if a development
6 includes at least 20 percent low-income units for housing
7 developments meeting the criteria of subparagraph (A) of paragraph
8 (1) of subdivision (b) or at least 11 percent very low income units
9 for housing developments meeting the criteria of subparagraph
10 (B) of paragraph (1) of subdivision (b), is located within one-half
11 mile of a major transit stop, and there is unobstructed access to
12 the major transit stop from the development, then, upon the request
13 of the developer, a city, county, or city and county shall not impose
14 a vehicular parking ratio, inclusive of parking for persons with a
15 disability and guests, that exceeds 0.5 spaces per unit.
16 Notwithstanding paragraph (1), if a development includes at least
17 40 percent moderate-income units for housing developments
18 meeting the criteria of subparagraph (D) of paragraph (1) of
19 subdivision (b), is located within one-half mile of a major transit
20 stop, as defined in subdivision (b) of Section 21155 of the Public
21 Resources Code, and the residents of the development have
22 unobstructed access to the major transit stop from the development
23 then, upon the request of the developer, a city, county, or city and
24 county shall not impose a vehicular parking ratio, inclusive of
25 parking for persons with a disability and guests, that exceeds 0.5
26 spaces per bedroom.

27 (B) For purposes of this subdivision, “unobstructed access to
28 the major transit stop” means a resident is able to access the major
29 transit stop without encountering natural or constructed
30 impediments. For purposes of this subparagraph, “natural or
31 constructed impediments” includes, but is not limited to, freeways,
32 rivers, mountains, and bodies of water, but does not include
33 residential structures, shopping centers, parking lots, or rails used
34 for transit.

35 (3) Notwithstanding paragraph (1), if a development meets the
36 criteria of subparagraph (G) of paragraph (1) of subdivision (b),
37 then, upon the request of the developer, a city, county, or city and
38 county shall not impose vehicular parking standards if the
39 development meets any of the following criteria:

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

4 (B) The development is a for-rent housing development for
5 individuals who are 55 years of age or older that complies with
6 Sections 51.2 and 51.3 of the Civil Code and the development has
7 either paratransit service or unobstructed access, within one-half
8 mile, to fixed bus route service that operates at least eight times
9 per day.

10 (C) The development is either a special needs housing
11 development, as defined in Section 51312 of the Health and Safety
12 Code, or a supportive housing development, as defined in Section
13 50675.14 of the Health and Safety Code. A development that is a
14 special needs housing development shall have either paratransit
15 service or unobstructed access, within one-half mile, to fixed bus
16 route service that operates at least eight times per day.

17 (4) If the total number of parking spaces required for a
18 development is other than a whole number, the number shall be
19 rounded up to the next whole number. For purposes of this
20 subdivision, a development may provide onsite parking through
21 tandem parking or uncovered parking, but not through onstreet
22 parking.

23 (5) This subdivision shall apply to a development that meets
24 the requirements of subdivisions (b) and (c), but only at the request
25 of the applicant. An applicant may request parking incentives or
26 concessions beyond those provided in this subdivision pursuant
27 to subdivision (d).

28 (6) This subdivision does not preclude a city, county, or city
29 and county from reducing or eliminating a parking requirement
30 for development projects of any type in any location.

31 (7) Notwithstanding paragraphs (2) and (3), if a city, county,
32 city and county, or an independent consultant has conducted an
33 areawide or jurisdictionwide parking study in the last seven years,
34 then the city, county, or city and county may impose a higher
35 vehicular parking ratio not to exceed the ratio described in
36 paragraph (1), based upon substantial evidence found in the parking
37 study, that includes, but is not limited to, an analysis of parking
38 availability, differing levels of transit access, walkability access
39 to transit services, the potential for shared parking, the effect of
40 parking requirements on the cost of market-rate and subsidized

1 developments, and the lower rates of car ownership for low-income
2 and very low income individuals, including seniors and special
3 needs individuals. The city, county, or city and county shall pay
4 the costs of any new study. The city, county, or city and county
5 shall make findings, based on a parking study completed in
6 conformity with this paragraph, supporting the need for the higher
7 parking ratio.

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

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

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

17 (s) Notwithstanding any other law, if a city, including a charter
18 city, county, or city and county has adopted an ordinance or a
19 housing program, or both an ordinance and a housing program,
20 that incentivizes the development of affordable housing that allows
21 for density bonuses that exceed the density bonuses required by
22 the version of this section effective through December 31, 2020,
23 that city, county, or city and county is not required to amend or
24 otherwise update its ordinance or corresponding affordable housing
25 incentive program to comply with the amendments made to this
26 section by the act adding this subdivision, and is exempt from
27 complying with the incentive and concession calculation
28 amendments made to this section by the act adding this subdivision
29 as set forth in subdivision (d), particularly subparagraphs (B) and
30 (C) of paragraph (2) of that subdivision, and the amendments made
31 to the density tables under subdivision (f).

32 (t) When an applicant proposes to construct a housing
33 development that conforms to the requirements of subparagraph
34 (A) or (B) of paragraph (1) of subdivision (b) that is a shared
35 housing building, the city, county, or city and county shall not
36 require any minimum unit size requirements or minimum bedroom
37 requirements that are in conflict with paragraph (7) of subdivision
38 (o).

1 (u) *Notwithstanding any other law, the provisions of this section*
2 *shall prevail in the event of a conflict between this section and an*
3 *ordinance, regulation, or other local law enacted by initiative.*

4 ~~(u)~~

5 (v) (1) The Legislature finds and declares that the intent behind
6 the Density Bonus Law is to allow public entities to reduce or even
7 eliminate subsidies for a particular project by allowing a developer
8 to include more total units in a project than would otherwise be
9 allowed by the local zoning ordinance in exchange for affordable
10 units. It further reaffirms that the intent is to cover at least some
11 of the financing gap of affordable housing with regulatory
12 incentives, rather than additional public subsidy.

13 (2) It is therefore the intent of the Legislature to make
14 modifications to the Density Bonus Law by the act adding this
15 subdivision to further incentivize the construction of very low,
16 low-, and moderate-income housing units. It is further the intent
17 of the Legislature in making these modifications to the Density
18 Bonus Law to ensure that any additional benefits conferred upon
19 a developer are balanced with the receipt of a public benefit in the
20 form of adequate levels of affordable housing. The Legislature
21 further intends that these modifications will ensure that the Density
22 Bonus Law creates incentives for the construction of more housing
23 across all areas of the state.

24 SEC. 3. The Legislature finds and declares that facilitating the
25 development of housing to combat the state's housing crisis is a
26 matter of statewide concern and is not a municipal affair as that
27 term is used in Section 5 of Article XI of the California
28 Constitution. Therefore, Section 2 of this act amending Section
29 65915 of the Government Code applies to all cities, including
30 charter cities.