

- i. Up to a 20% increase in maximum allowable intensity in the local general plan;
 - ii. Up to a 20% increase in maximum allowable floor area ratio;
 - iii. Up to a 20% increase in maximum height requirements;
 - iv. Up to a 20% reduction in minimum parking requirements;
 - v. Use of a limited-use or limited-application elevator for upper floor accessibility; and
 - vi. An exception to a zoning ordinance or other land use regulation.
- 3) Requires the commercial developer to complete an agreement with a housing developer that specifies how the commercial developer will contribute affordable housing.
- 4) Requires the agreement to be approved by the local jurisdiction.
- 5) Specifies that the commercial developer may provide affordable housing by:
 - a) Directly building the units;
 - b) Donating a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing; or
 - c) Making a cash payment to the affordable housing developer that must be used towards the costs of constructing the affordable housing project.
- 6) Provides that a commercial project cannot be eligible for a density bonus if the proposed site contains or contained lower-income housing, as specified.
- 7) Includes the following specifications:
 - a) That nothing in this section precludes any additional allowances or incentives offered to developers by local governments pursuant to law or regulation;
 - b) That the local government may withhold certificates of occupancy for the commercial development until the developer has completed construction of the affordable units, unless the developer of the affordable units has commenced construction of those units in accordance with timelines ascribed by their mutual agreement;
 - c) That nothing in this section precludes an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under state density bonus law; and
 - d) That a development bonus pursuant to this section must not include a reduction or waiver of payment of any required affordable housing fee owed by the commercial developer.

- 8) Requires a city or county to submit to the Department of Housing and Community Development (HCD), as part of its annual report, information describing an approved commercial development bonus, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.
- 9) Sunsets this program January 1, 2022.

This bill:

- 1) Extends the sunset from January 1, 2022 to January 1, 2028 for local jurisdictions providing density bonuses for commercial developments.

COMMENTS:

- 1) *Author's Statement.* "AB 1551 will continue the progress made by AB 1934 in 2016 in addressing California's affordable housing crisis. By requiring local governments to provide density bonuses to housing developers, California will increase the number of affordable units available and help the tens of thousands of people experiencing homelessness in our state. With the help of AB 1551, California will create more opportunities to build affordable housing and allow more time for interested parties to build an affordable housing supply to get people off the streets and into homes of their own."
- 2) *California Housing Crisis.* The lack of supply is the primary factor underlying California's housing crunch. The state Department of Housing and Community Development (HCD) estimates that California needs to build 180,000 new homes a year to keep up with population growth.¹ More recently, HCD noted in its statewide housing plan that California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households. This represents more than double the housing planned for in the last eight-year cycle.²

The median home price in California is \$771,270 in 2022 which is double the nationwide median.³ It is second to Hawaii, and Washington is third with a

¹ "California's Housing Future: Challenges and Opportunities". (California Department of Housing and Community Development, February 2018). https://www.hcd.ca.gov/policy-research/plans-reports/docs/sha_final_combined.pdf

² "A home for every Californian". (Department of Housing and Community Development, March 2022). <https://statewide-housing-plan-cahcd.hub.arcgis.com/>

³ "Finance Bulletin March 2022". (California Department of Finance, March 2022) <https://dof.ca.gov/wp-content/uploads/Forecasting/Economics/Documents/Mar-22.pdf>

median price of \$592,400.⁴ In terms of rental markets, California has all ten of the top ten most unaffordable counties for a two-bedroom apartment and holds eight of the top ten most unaffordable metropolitan areas.⁵ In addition, almost three million enter households, almost half of rental households in California, are low-income (50-80% AMI), very low income (30-50% AMI), or extremely low income (0-30% AMI).⁶ As a result, many Californians are rent burdened (spend more than 30% of their income on rent): almost 90% of extremely low income, 85% of very low income, and 63% of low income households.⁷

- 3) *Residential Density Bonus Law*. Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. Density bonus law allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy. In 2020, HCD approved around 18,000 units, over 30% of which are for low or very low incomes, across 335 projects through Density Bonus Law.⁸
- 4) *Commercial Density Bonus Law*. This bill, and its predecessor (AB 1934 Santiago Chapter 747, Statutes of 2016), tries to create affordable housing through commercial developments. There are six bonuses a commercial developer can obtain, and three ways the developer can help finance affordable housing. Unlike residential density bonus law which has very clear criteria to follow to obtain benefits, this bill does not have clear guidelines as to what the commercial development gets for what it gives. Instead, the bonuses are mutually agreed upon by the developer and the jurisdiction. This lack of clarity may make it difficult for developers to try and gain these benefits if one has to negotiate them.

⁴ "Redfin Housing Market Data Center and Dashboard". (RedFin, 2022). <https://www.redfin.com/news/data-center/>
<https://app.dataherald.com/visualization/edit/62279ee97836569a37df1a8b>

⁵ "2022 California Housing Profile". (National Low Income Housing Coalition, April 2022).
https://nlihc.org/sites/default/files/SHP_CA.pdf

⁶ "California Affordable Housing Needs Report 2022". (California Housing Partnership, March 2022).
<https://1p08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2022/03/California-Affordable-Housing-Needs-Report-2022.pdf>

⁷ "2022 California Housing Profile". (National Low Income Housing Coalition, April 2022).
https://nlihc.org/sites/default/files/SHP_CA.pdf

⁸ "HCD APR Dashboard". (California Department of Housing and Community Development) Page 13/17.
<https://www.hcd.ca.gov/apr-data-dashboard-and-downloads>

- 5) *Has it been used?* During the five years the program existed, there is not much evidence to suggest that it was widely utilized. AB 1934 required that local governments report use of this program to HCD as part of their annual progress reports. Data provided by HCD revealed that only five units of affordable housing had been created due to the program across three projects. It is unknown whether other projects statewide used this program but the local government did not include the information in its annual progress report.
- 6) *Should there be changes?* As of now, the program in this bill is exactly the same as the program that already exists. The author might want to investigate why developers have not used the program more widely and consider what changes to make so that the program is used more often.
- 7) *Double Referral.* This bill is also referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 1934 (Santiago, Chapter 747, Statutes of 2016) — created the original commercial density bonus program that sunset January 1, 2022.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, March 25, 2022.)

SUPPORT:

California Apartment Association

OPPOSITION:

None received.

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