

MEMO

To: City of Cupertino
Legislative Review Committee

From: Townsend Public Affairs, Inc.

Date: June 19, 2020

Subject: Consider adopting a position on Senate Bill 1085 (Skinner) – Density Bonus Law

Summary

This measure would modify existing Density Bonus Law by increasing the number of incentives provided to housing development projects that include moderate income rental housing units. Specifically, the bill would:

- Provide that a development containing 20% moderate-income rental units to receive a 35% density bonus, and a parking ratio not to exceed .5 spaces per bedroom for projects located within ½ mile from a transit stop.
- Provide that the inclusion of moderate-income rental units shall entitle a developer to the following amount of concessions and incentives:
 - One incentive or concession for projects that include at least 20% of the total rental units for moderate-income households.
 - Two incentive or concession for projects that include at least 30% of the total rental units for moderate-income households.
 - Three incentive or concession for projects that include at least 40% of the total rental units for moderate-income households.
- Provides that to be eligible for the concessions and incentives above, the rent for the moderate-income unit must be 30% below the market rate for the locality.
- Prohibits fees related to affordable housing from being imposed on a housing development's affordable units or bonus units.

In addition to the changes for projects with moderate income units, SB 1085 makes several changes to density bonus law:

- Prohibits local governments from imposing housing fees for affordable housing upon low- and moderate-income units or any bonus units in a density bonus housing development.
- States that the total units shall be designated to satisfy an inclusionary zoning requirement. In other words, any affordable units constructed to receive a density bonus shall count towards a local government's inclusionary ordinance, rather than be additive to the inclusionary ordinance requirement.
- Authorizes low-income student housing projects to receive an incentive or concession.
- Increases the density for a development that contains 11% VLI units to receive a 40% density bonus, instead of a 35% density bonus. This increase is to ensure that the creation

of very low-income developments is more attractive to a developer than a development containing moderate-income units.

	Current Law: Very Low-Income (VLI)	Current Law: Low-Income (LI)	Current Law: Mod-Income	SB 1085 (Skinner): Changes to Mod-Income
Rent / For Sale	Rental units	Rental units	For sale in common interest developments (CIDs) only	Different benefits to both for-sale in CIDs and rental units anywhere
Density	5% of units --> 20% DB ... 11% of units --> 35% DB 40% DB	10 % of units --> 20% DB ... 20 % of units --> 35% DB	10 % of units --> 5% DB ... 40 % of units --> 35% DB	<u>Specifically, a development with 20% of units for rent to mod-incomes gets 35% DB</u>
Incentives / Concessions	* 1 incentive for: 5% VLI * 2 incentives for: 10% VLI * 3 incentives for: 15% VLI	* 1 incentive for: 10% LI * 2 incentives for: 20% LI * 3 incentives for: 30% LI	* 1 incentive for: 10% Mod for-sale in CIDs * 2 incentives for: 20% Mod for sale in CIDs * 3 incentives for: 30% Mod for sale in CIDs	* 1 incentive for: 10% Mod for sale in CIDs <u>OR 20% MOD rentals</u> * 2 incentives for: 20% Mod for sale in CIDs <u>OR 30% MOD rentals</u> * 3 incentives for: 30% Mod for sale in CIDs <u>OR 40% MOD rentals</u>
Parking near transit ratios	Projects with 11% VLI only have to provide .5 spaces per bedroom.	Projects with 20% LI units only have to provide .5 spaces per bedroom.	No further reduced parking, other than specific parking ratios under DBL: a) 0 to 1 BR — 1 onsite parking space b) 2 to 3 BR — 2 onsite parking spaces c) 4 and more BRs — 2.5 parking spaces	<u>Projects with 20% mod units only have to provide .5 spaces per bedroom.</u>

Status

SB 1085 was approved by the Senate Housing Committee on May 22nd on a 9-0 vote. The measure is currently in the Senate Appropriations Committee and has been referred to the Suspense File. The measure is scheduled to be heard on June 18th.

Support

According to the author, “the State Density Bonus Law is a unique tool that incentivizes developers to build more affordable housing in California. However, flaws in the program result in many cities underutilizing the density bonus tool or not using it at all. SB 1085 improves and clarifies the density bonus statute to expand its use in California to increase affordable housing production.”

Supporters of SB 1085 include: Bay Area Council, Bridge Housing Corporation, California Assn. of Realtors, California Building Industry Assn, California YIMBY, Los Angeles Business Council, San Francisco Bay Area Planning and Urban Research Assn, San Francisco Housing Action Coalition, and the Turner Center for Housing Innovation

Opposition

The California Rural Legal Assistance Foundation (CRLAF) and Western Center on Law and Poverty (WCLP) are opposed to this bill because it would incentivize the construction of moderate-income units at the expense of low- and very low-income households. This will further exacerbate the affordability crisis for lower-income households. CRLAF and WCLP are also opposed to increasing benefits to student housing developments without adding any increased affordability. These projects were not given access to the law’s other benefits given that rents are typically charged on a per bed basis rather than per unit and therefore lead to higher rental income. They are concerned that not enough time has passed to determine that these student housing projects need access to additional benefits to be viable. A Better Way California is opposed to imposing additional density, which they view as mandating a one-size-fits-all solution that ignores the complexity and work involved in nexus studies and other undertakings to determine the impacts of a project. They are also opposed to eliminating needed local fees that pay for critical infrastructure. They note that current density bonus law is sufficient to retain local oversight over developments projects while spurring needed production.

Opponents of SB 1085 include: A Better Way Forward to House California, California Rural Legal Assistance Foundation, and the Western Center on Law and Poverty.

Potential Impact

While the author’s intent is to incentivize the construction of more developments containing moderate-income units, this bill may have the unintended consequence of discouraging the development low-income developments. This is due to the fact that it would enable certain developments with 20% low income units to receive the same benefits (density and possible reduced parking) as certain developments with 20% moderate-income units. Given the choice, a developer will likely choose to develop the moderate-income units because those developments will yield more returns for the developer.

Recommended Action

Adopt an oppose position on SB 1085 and authorize the Mayor to send letters to the state legislature.