
SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2023 - 2024 Regular

Bill No: AB 1287

Hearing Date: 6/20/2023

Author: Alvarez

Version: 4/26/2023

Urgency: No

Fiscal: Yes

Consultant: Alison Hughes

SUBJECT: Density Bonus Law: additional density bonus and incentives or concessions: California Coastal Act of 1976

DIGEST: This bill requires a city, county, or city and county to grant additional density and concessions and incentives if an applicant agrees to include additional low- or moderate-income units on top of the maximum amount of units for lower, very-low, or moderate-income units.

ANALYSIS:

Existing law:

- 1) Requires each city and county to adopt an ordinance that specifies how it will implement state Density Bonus Law (DBL). Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:
 - a) 10% of the total units of a housing development for lower income households;
 - b) 5% of the total units of a housing development for very low-income households;
 - c) A senior citizen housing development or mobile home park;
 - d) 10% of the units in a common interest development (CID) for moderate-income households;
 - e) 10% of the total units for transitional foster youth, veterans, or people experiencing homelessness; or
 - f) 20% of the total units for lower-income students in a student housing development.
 - g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households.

- 2) Requires a city or county to allow an increase in density on a sliding scale from 20% to 50%, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5% to 50% over the otherwise allowable residential density.
- 3) Provides that upon the request of a developer, a city or county shall not require a vehicular parking ratio, inclusive of disabled and guest parking, that meets the following ratios:
 - a) Zero to one bedroom — one onsite parking space.
 - b) Two to three bedrooms — one and one-half onsite parking spaces.
 - c) Four and more bedrooms — two and one-half parking spaces.
- 4) Notwithstanding (4) above, provides that a city or county shall not impose a parking ratio higher than 0.5 spaces per unit, nor any parking standards, for a project that is:
 - a) Located within one-half mile of a major transit stop and the residents have unobstructed access to the transit stop; or
 - b) A for-rent housing development for individuals who are 62 years or older and the residents have either access to paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
- 5) Notwithstanding (4) and (5) above, provides that a city or county shall not impose any minimum parking requirement on a housing development that consists solely of rental units for lower income families and the is either a special needs or a supportive housing development.
- 6) Provides that the applicant shall receive the following number of incentives or concessions:
 - a) One incentive or concession for projects that include at least 10% of the total units for moderate-income households, 10% of the total units for lower-income households, or at least 5% for very low-income households.
 - b) Two incentives or concessions for projects that include at least 20% of the total units for moderate-income households, 17% of the total units for lower income households, or least 10% for very low income households.

- c) Three incentives or concessions for projects that include at least 30% of the total units for moderate-income households 24% of the total units for lower-income households, or at least 15% for very low-income households.
- d) Four incentives or concessions for projects where 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households, as well as a height increase up to 33 feet if the project is located within one-half mile of a transit stop.

This bill:

- 1) Grants five concessions and incentives, instead of four, to projects that are 100% affordable to lower income households, except that up to 20% of the units may be for moderate-income households.
- 2) Grants four concessions and incentives for projects that include at least 16% of the units for very low-income households or at least 45% for persons and families of moderate-income in a development in which the units are for sale.
- 3) Requires a local government to grant an additional density bonus, on top of any increase authorized in existing law, as specified below in (4), when an applicant proposes to construct a housing development that meets one of the following requirements:
 - a) The housing development provides 24% of the base density units to lower income households;
 - b) The housing development provides 15% of the base density units to very low income households;
 - c) The housing development provides 44% of the total units to moderate-income households.
- 4) Requires a local government to grant the following additional density bonus for housing development that meets the requirements in (3):

% VLI Units	% Density Bonus
5	20
6	23.75
7	27.5
8	31.25
9	35
20	38.75

% Mod Units	% 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

COMMENTS:

- 1) *Author's statement.* "While we must continue to support more affordable housing for low-income families, a holistic approach to the housing crisis requires we also tackle housing unaffordability for middle-income earners. AB 1287 does this by creating moderate income benefits, which would stack on top of the existing Density Bonus Law benefits. Importantly, AB 1287 requires that a project maximizes the production of Very-Low, Low, or Moderate Income units, as allowed by current Density Bonus Law, before they can take advantage of the incentives in AB 1287. This structure ensures that the new Moderate Income Bonus never undermines existing incentives under Density Bonus Law. In fact, it even creates new economic reasons to maximize deeply affordable unit production, by offering an additional sweetener in the form of the stacked bonus and additional concessions."
- 2) *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. DBL 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 ordinance, 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 DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions (hereafter referred to as incentives); waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards.

To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing. If one of these options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a developer is entitled to a sliding scale of density bonuses, up to a maximum of 50% of the maximum zoning density and up to four incentives, as specified, depending on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units and 20% density for 10% low-income units. The maximum additional density permitted is 50%, in exchange for 15% very low-income units and 24% low-income units. The developer also negotiates additional incentives, reduced parking, and design standard waivers, with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

- 3) *More benefits for more affordability.* Under current density bonus law, a developer can receive maximum density bonuses for a project that contains 15% of the units affordable to very low-income households, 24% of the units affordable to low income households, or 44% of the units affordable to moderate income households. If a developer goes above these percentages, they do not receive any additional density bonuses, unless 100% of the units are affordable to low income households.

This bill would allow a developer to get additional density, as specified, if the developer provides more affordable units above and beyond what is currently provided for under DBL. For example, as noted above, under current law, if a developer provides 15% of the units affordable to very low-income units, they receive a max density bonus of 35%. Under current law, if a developer includes 20% of the units affordable to very low-income families (*i.e.*, 5% over the current DBL maximum percentage), they'd still only receive a 35% density bonus. With this bill, however, because the developer provided an additional

5% of the units affordable to very low income households, the developer is entitled to another 20% density bonus for a total of 55% density bonus (*i.e.*, 35% under current law + 20% under this bill). This bill also grants projects with higher affordability levels an additional incentive and concession.

- 4) *DBL v. California Coastal Act*. Density bonus law (DBL) has proven to be a powerful tool to unlock affordable housing units across the state. Despite recent efforts to strengthen DBL, including the provisions of this bill, affordable housing developers do not often pursue projects in the coastal zone, citing difficulties with the California Coastal Commission (CCC) as one of the reasons.

According to the CCC, coastal communities are on average wealthier and less diverse than the state as a whole. Specifically, within one kilometer of coastal access locations, the proportion of white residents is 25% higher than what would be expected given an even distribution of residents across California. Coastal residents earn on average 20% more than the state average income.

Under current density bonus law, DBL cannot supercede or in any way lessen or alter the effect or application of the California Coastal Act; this often means that subjective standards are applied to housing developments, leading to uncertainty, delays, and added costs, which can mean the death of an affordable housing project. Additionally, communities in the coastal zone often utilize any tool necessary to keep multifamily projects out of their neighborhoods, including through the use of height restrictions and unit caps.

The Legislature in recent years has also taken great strides to ensure that exclusionary communities (previously redlined) are open to all populations and housing types by unlocking more mixed-income, gentle density (*i.e.*, missing middle housing types), and requiring all local governments demonstrate how they are affirmatively furthering fair housing. Additional requirements through the Coastal Act in the coastal zone that limit or effectively prohibit mixed income and affordable housing projects from being developed in wealthier areas undermines that work, and further exacerbates fair housing challenges and maintains segregated communities.

While this bill does not currently address any conflicts between the Coastal Act and DBL, the Legislature should consider whether DBL should apply in the coastal zone in the same manner as the rest of the state.

5) *Double referral.* This bill has also been referred to the Governance & Finance Committee.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 14, 2023.)

SUPPORT:

San Diego Housing Commission (Co-Sponsor)
Abundant Housing LA
Bay Area Council
California Apartment Association
California Building Industry Association (CBIA)
California YIMBY
Circulate San Diego
Civicwell
Council of Infill Builders
East Bay for Everyone
Eden Housing
Fieldstead and Company, INC.
Generation Housing
Housing Action Coalition
Midpen Housing
National Association of Hispanic Real Estate Professionals (NAHREP)
Orange County Business Council
San Francisco Bay Area Planning and Urban Research Association (SPUR)

OPPOSITION:

None received.

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