

---

## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

---

**Bill No:** AB 1287  
**Author:** Alvarez  
**Version:** 6/21/23  
**Consultant:** Peterson

**Hearing Date:** 7/5/23  
**Tax Levy:** No  
**Fiscal:** Yes

### ***DENSITY BONUS LAW: ADDITIONAL DENSITY BONUS AND INCENTIVES OR CONCESSIONS***

*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.*

### **Background**

Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

**Planning and Zoning Law.** State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities’ and counties’ major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

**Zoning and approval processes.** Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff “ministerially” or without further approval from elected officials, but most large housing projects require “discretionary” approvals from local governments, such as a conditional use

permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals.

**Density bonus law.** State law, known as density bonus law, grants certain benefits to developers who build affordable units in order to encourage greater affordable housing production. Density bonus law 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:

- 10% of the total units of a housing development for lower income households;
- 5% of the total units of a housing development for very low-income households;
- A senior citizen housing development or mobile home park;
- 10% of the units in a common interest development (CID) for moderate-income households;
- 10% of the total units for transitional foster youth, disabled veterans, or homeless persons; or
- 20% of the total units for lower income students in a student housing development.

If a project meets one of these conditions, the city or county must allow an increase in density on a sliding scale from 20%-50% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan, depending on the percentage of affordable units.

Density bonus law also grants certain reductions in minimum parking requirements and grants “incentives or concessions” that can be used to modify development policies that add costs or reduce the number of units a developer can build on a site. The number of incentives or concessions a project may be eligible for is based on the percentage of affordable units contained in the project, up to a maximum of four. Incentives and concessions can vary widely based on the individual projects, but examples can include reduced fees, waivers of zoning codes, or reduced parking requirements. Density bonus law also allows developer waivers of any development standards that physically prevents the developer from constructing a project at the density allowed, along with the incentives or concessions, under density bonus law.

**“Super” density bonus.** Density bonus law provides significantly enhanced benefits to projects that are entirely composed of affordable housing units (AB 1763, Chiu, 2019). These projects may include up to 20% of the units affordable to moderate income households—the remaining units must be affordable to lower-income households. Under density bonus law, 100% affordable housing projects receive four incentives or concessions (other density bonus projects only get three) and an increase in allowable density that is 80% of the percentage of units affordable to lower-income households (other projects max out at a 50% increase in density).

If the project is located within one-half mile of a major transit stop, these projects receive even greater benefits: a height increase of up to three additional stories, or 33 feet, and the project also cannot be subject to any maximum controls on density. 100% lower-income affordable projects that are located within ½ mile of a major transit stop also escape any minimum parking requirements. Major transit stops include a rail or bus rapid transit station, a ferry terminal, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, and any major transit stop identified in a regional transportation plan.

Last year, AB 2334 (Wicks) geographically expanded super density bonus to projects in areas in sixteen counties where existing residential development generates 15% less vehicle miles traveled (VMT) per person than in the rest of the region.

The author wants to provide further incentives for the construction of affordable housing by stacking density bonuses, and provide additional concessions to more affordable projects.

### **Proposed Law**

Assembly Bill 1287 expands density bonus for certain projects that already qualify for bonuses.

First, AB 1287 increases the number of incentives or concessions for 100% affordable projects from four to five.

Second, AB 1287 grants projects that include at least 16% of units for very low-income households, or at least 45% for moderate income in a development in which the units are for sale, four incentives or concessions.

Third, AB 1287 requires a local agency to grant additional density bonus when an applicant proposes to construct a housing development that does the following:

- Dedicates at least 10% of total units for lower-income households;
- Includes additional rental or for-sale units for very low- or moderate-income households; and
- Meets any of the following:
  - For projects with base density units of 10% for lower-income households, provides 24% of total units to lower-income households;
  - For projects with base density units of 5% of total units for very low-income households, provides 15% of total units to very low-income households;
  - For projects with base density units of 10% of total units for sale to moderate-income households, provides 44% of total units to moderate-income units.

The local agency must calculate the additional density bonus as follows:

<b>Percentage Very Low Income Units</b>	<b>Percentage Density Bonus</b>
5	20
6	23.75
7	27.5
8	31.25
9	35
10	38.75

<b>Percentage Moderate-Income Units</b>	<b>Percentage Density Bonus</b>
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

These increases must be in addition to any increase in density under existing density bonus law.

The measure makes various technical changes.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, “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. Home rule. Local officials are elected to represent the interests of all their constituents and to look broadly at how new development might impact their community. For example, concerns over maintaining the character of a community prompt some local governments to impose density requirements to ensure a highly dense project is not surrounded by single family homes. State density bonus law already 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 promises certain percentages of affordable units, regardless of the decisions local officials have made regarding density. AB 1287 goes one step further by allowing projects that offer more affordability additional bonuses. On the one hand, this could result in more affordable units on certain projects. On the other hand, the California Contract Cities Association notes that, “Every city is different, and these unique attributes should be a key consideration when developing policies that will impact local communities. In its current form, the Density Bonus Law already serves as a robust set of rules and incentives for housing developments across the State. By adding new layers of requirements to the Density Bonus Law, AB 1287 would further restrict cities’ ability to oversee and address the specific housing needs of their constituents.” Does AB 1287 go too far in taking decisions about housing density out of the hands of local elected officials?

3. How much is too much? 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 lower-income households. AB 1287 seeks to allow certain projects to stack additional density bonuses on top of their base density bonus. For example, if a developer provides 15% of units very low-income households, the developer receives a max density bonus of 35%. If a developer includes 20% of units to very low-income households (an additional 5%), the developer only receives the same 35% density bonus. Under AB 1287, the developer that dedicates an additional 5% of units to very low-income households would receive an additional 20% bonus, for a total 55% density bonus. This bill also grants projects with higher affordability levels an additional incentive and concession. While this could result in more affordable units, it could concentrate units affordable to lower-income households in a smaller number of denser developments. The Committee may wish to consider amending the bill to limit the proportion of lower-income units in developments that stack AB 1287's density bonus on top of their existing density bonus.

4. Let's be clear. AB 1287 requires all projects to dedicate 10% of total units for lower-income households, even if the developer received the base density bonus because of the number of very low-income or moderate-income units they dedicated. To ensure the bill furthers the author's intent, the Committee may wish to consider amending the bill to clarify that it applies to projects that maximize 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.

5. Let's get technical! Committee staff recommends the following technical amendments:

- On page 28, line 21, replace "moderate-income units" with "moderate-income households."

6. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 1287 imposes new duties on local officials regarding housing development approvals, Legislative Counsel says that the bill imposes a new state mandate. AB 1287 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

7. Incoming! The Senate Housing Committee approved AB 1287 at its June 20<sup>th</sup> hearing on a vote of 9-1. The Senate Governance and Finance Committee is hearing AB 1287 as the committee of second reference.

### **Assembly Actions**

Assembly Housing and Community Development Committee:	8-0
Assembly Natural Resources Committee:	10-0
Assembly Appropriations Committee:	15-0
Assembly Floor:	72-1

### **Support and Opposition** (6/30/23)

Support: San Diego Housing Commission (Co-Sponsor)  
Abundant Housing LA

Bay Area Council  
California Apartment Association  
California Building Industry Association (CBIA)  
California Communiity Builders  
Circulate San Diego  
Civicwell  
Council of Infill Builders  
East Bay for Everyone  
East Bay Yimby  
Fieldstead and Company, INC.  
Greenbelt Alliance  
Grow the Richmond  
Housing Action Coalition  
How to Adu  
Midpen Housing  
Mountain View Yimby  
Napa-Solano for Everyone  
National Association of Hispanic Real Estate Professionals (NAHREP)  
New Livable California Db a Livable California  
Northern Neighbors  
Orange County Business Council  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
San Francisco Yimby  
Santa Cruz Yimby  
Santa Rosa Yimby  
Slo County Yimby  
South Bay Yimby  
Southside Forward  
Spur  
Urban Environmentalists  
Ventura County Yimby  
Yimby Action

Opposition: California Contract Cities Association

-- END --