
SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair
2025 - 2026 Regular

Bill No: AB 87
Author: Boerner
Version: 4/24/25

Hearing Date: 7/9/25
Fiscal: No
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HOUSING DEVELOPMENT: DENSITY BONUSES: MIXED-USE DEVELOPMENTS

Prohibits an incentive or concession granted under Density Bonus Law from being applied to the hotel, motel, bed and breakfast inn, or other visitor-serving portion of a mixed-use development project.

Background

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.

Cities and counties 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 consideration. Zoning ordinances and other development decisions must be consistent with the city or county’s general plan.

Density bonus law. The state’s 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 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% to 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.

Incentives, concessions, waivers, and other benefits. Density bonus law also grants “incentives or concessions” that can be used to modify development policies that add costs or reduce the number of units that a developer can build on a site. 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. 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. Density bonus law also allows “waivers” of any development standards that physically prevent the developer from constructing a project at the density allowed to the project, along with the incentives or concessions, under density bonus law. Finally, density bonus law reduces or eliminates the parking that can be required in connection with a project.

Local governments must grant the requested incentives, concessions, or waivers except under very limited circumstances:

- If the waiver, incentive, or concession will have a specific, adverse impact upon public health and safety or on any property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or
- If it finds the concession or incentive does not result in identifiable and actual cost reductions to provide for affordable rents or housing costs.

Recent court cases have expanded density bonus law on the basis that “if the project were not built, it goes without saying that housing units for lower income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved.”¹ This interpretation means that “a city [or county] may not apply any development standard that would physically preclude construction of that project as designed,”² if the project includes the required number of affordable units.

Housing Accountability Act. The Legislature enacted the Housing Accountability Act (HAA) in 1982 in response to concerns over a growing rejection of housing development by local governments due to not-in-my-backyard (NIMBY) sentiments among local residents. The HAA, also known as the “Anti-NIMBY” law, limits the ability of local agencies to deny or make infeasible housing developments. To qualify, a housing development project must be entirely residential, transitional housing, supportive housing, farmworker housing, or a mixed-use development. The HAA defines mixed-use development to be one that consists of residential and nonresidential uses that is 2/3rds residential by square footage. A project can also qualify as mixed use with as little as 50% residential square footage if the project creates at least 500 new units and no portion of the project is designated for use as a hotel, as specified.

970 Turquoise Street project. In August 2024, the City of San Diego received an application for a project located at 970 Turquoise Street that is a mixed-use project containing 74 residential units, 10 of which have affordability restrictions. The project is eligible for three incentives or concessions under density bonus law, and the developer wants to use one of those incentives to increase the floor-area ratio for the commercial component of the development to accommodate 139 hotel rooms. To fit those hotel rooms and the bonus units that the project is entitled to under density bonus law, the developer requested a waiver of the city’s 30 foot height limit to construct

¹ *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329.

² *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755.

a 240-foot tall structure. The City of San Diego requested technical assistance from the Department of Housing and Community Development, which issued a letter on December 12, 2024, stating among other things that:

- “A requested incentive or concession must not just reduce costs (i.e., support the economic feasibility of the project); that reduction in cost must be for the purposes of *providing affordable housing for lower-income or moderate-income households.*”
- “The purpose of incentives is to support the economic feasibility of *lower-income housing* specifically.”
- Hotel rooms are not an “amenity” but rather a separate land use in a mixed-used project.
- “While [density bonus law] contains no explicit requirement for a minimum percentage of residential floor area in a mixed-use development, an interpretation that a project with the minimum of five residential units is essentially entitled to a theoretically infinite amount of non-residential floor area could result in an absurd outcome that does not further the fundamental purpose of [density bonus law].”

The author wants to ensure that projects that benefit from density bonus law are primarily residential.

Proposed Law

Assembly Bill 87 prohibits a city or county from applying incentives or concessions under density bonus law to the portion of a mixed-use development containing a hotel, motel, bed and breakfast inn, or other visitor-serving purpose. It also makes technical and conforming changes.

Comments

1. Purpose of the bill. According to the author, “AB 87 ensures Density Bonus Law is being applied as it was intended, to increase California’s affordable housing stock to meet increasing needs. Density Bonus Law is a tool that is meant to encourage the construction of units for low income Californians. However, there is currently a loophole in DBL that allows developers to gain incentives while not meaningfully contributing to affordable housing. In my district, a project application was submitted that allowed the development to exceed the city’s height limit, a proposed 238-foot tower adding 139 hotel rooms and only 10 affordable units. California needs affordable housing options, and we need to hold developers using DBL to the intent of the law, which is to increase access to affordable housing for hard-working Californians.”

2. More or less. Density bonus law rests on the premise that if you give benefits to housing projects, the project developer can include affordable housing and more units overall. AB 87 precludes the application of density bonus law to the portion of a housing project with a hotel component. This could have a small, but non-zero, effect on housing development in the state. Supporters of AB 87 note that hotel rooms can replace residential units in projects, so AB 87 is more likely to increase housing affordability.

3. This sounds familiar. The Legislature is also considering SB 92 (Blakespear), which the Senate Local Government Committee approved at its April 30th hearing on a vote of 6-0. SB 92 also limits the application of density bonus law to the portions of projects that contain hotels, but does so in a way that (1) preserves the ability of local governments to grant benefits under density bonus law to these projects if they so choose, and (2) clarifies that the bill doesn’t affect

lawfully-operated short term rentals. To ensure consistency between the two measures, the Committee may wish to consider amending AB 87 to mirror the provisions of SB 92 pertaining to hotels.

3. Charter city. The California Constitution allows cities that adopt charters to control their own “municipal affairs.” In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn’t define “municipal affairs,” the courts determine whether a topic is a municipal affair or whether it’s an issue of statewide concern. AB 87 says that it applies to all cities, including charter cities. To support this assertion, the bill includes a legislative finding and declaration that the bill’s provisions are a matter of statewide concern, but does not include a supporting reason. The Committee may wish to consider amending AB 87 to supply a reason for the statewide concern.

4. Incoming! The Senate Rules Committee has ordered a double referral of AB 87: first to the Committee on Housing, which approved AB 87 at its June 24th hearing on a vote of 10-1, and second to the Committee on Local Government.

Assembly Actions

Assembly Housing and Community Development Committee:	10-0
Assembly Local Government Committee:	9-0
Assembly Floor:	75-0

Support and Opposition (7/3/25)

Support: City of Carlsbad
 City of Encinitas
 League of California Cities
 Livable California
 Unite Here International Union, Afl-cio

Opposition: None Submitted

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