

# CALIFORNIA'S DENSITY BONUS LAW

Incentivizing supply and building affordable housing.

By Timothy M. Hutter

California's housing crisis is unique in at least one sense: it is a problem that's (almost) universally acknowledged to exist, and political leaders at the state and local levels are eager for solutions. Funding for housing solutions has even become

a focal point for California businesses trying to lower the cost of living for their employees. State law already requires cities to plan for new housing, with lofty goals in the Regional Housing Needs Allocations (RHNA) assigned. However, the recent cycle of

housing element updates in Southern California has been controversial. As a result, developers are looking for creative avenues to project approval, and the incorporation of affordable housing using state density bonus law can sometimes help.

As developers know, there are still elements of the population who believe that we, as a state, are full. Perhaps not surprisingly, this is a prevalent sentiment in coastal areas, where long-time residents muse about their idyllic "sleepy beach towns" and demand that local elected officials preserve "community character" rather than work to lower the cost of housing for those who didn't buy decades ago. Softer expressions of the same sentiment typically include "I'm not opposed to housing [or affordable housing], but it needs to go in the right place." When projects require compliance with the California Environmental Quality Act (CEQA), development opponents often take advantage of the opportunity to hold up projects in the name of environmental justice, heightening perceived conflicts between the state's climate change policies and its housing goals.

California's Density Bonus Law (Gov. Code 65915, the "DBL") is intended to encourage developers to incorporate specified percentages of affordable housing into their projects by promising carrots that include increased density (usually used to build more market-rate units); incentives and waivers of otherwise applicable development standards like height, floor-area ratio (FAR), setbacks and reduced parking ratios.

The DBL also provides some carrot sticks by requiring specific findings for denial of incentives and waivers, and possible recovery of attorneys' fees if a developer has to sue a city to overturn a wrongful denial. A January 2022 decision issued by the California Court of Appeal, *Bankers 150 v. City of San Diego*, affirmed the power of DBL benefits and the limits imposed on local authority.

The DBL offers solutions to California's housing woes in a number of ways:

1. Private developers are incentivized to provide an increased supply of both market-rate and affordable units, and to do so without public subsidy.
2. The increased density (up to 50 percent after a 2020 amendment) or added flexibility (where extra units aren't provided) allows projects to be built on sites that otherwise wouldn't make financial sense.

3. The increased density that comes with the DBL occurs without discretionary upzoning, which saves time, avoids potentially difficult votes for local officials and sometimes allows developers to avoid CEQA.

Circulate San Diego, a housing and mobility think tank, recently published "Home Run for Homes: Celebrating the Success of San Diego's Affordable Homes Bonus Program."

The organization studied the City of San Diego's implementation of the DBL from 2016 to 2020, which included augmented bonuses that were incorporated into state law in 2021 following the passage of Assembly Bill 2345. The City of San Diego deserves credit for creative housing solutions that build upon the concept of density bonus, and staff members who are looking for ways to say yes to new housing. Circulate's report provides data-driven evidence of success in San Diego, as well as a basis for local changes to be forwarded onto Sacramento as part of annual improvements to the DBL.

With the trend of build-to-rent, single-family housing developments spreading across California, the DBL is also seeing a new application. Previously used primarily for apartments — with the resulting affordable units typically in projects with studios to two-bedroom units — larger single-family homes are now being proposed and built by developers who will own and operate entire neighborhoods. This effort, especially when combined with a push at the state and local levels for accessory dwelling units (ADUs), may bring density at a different scale than the multifamily buildings that tend to scare NIMBY neighbors.

The DBL is not a panacea for California's housing crisis, but it's one tool available to developers (and cities) seeking to expand housing supply. As the courts and legislature continue to sharpen that tool and put others in the toolbox, there is some reason for optimism that new units may actually get built.

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