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2024 CALIFORNIA **DEVELOPERS' TOOLKIT:** DENSITY BONUS LAW, HOUSING LAWS, & STRATEGIES FOR SUCCESS

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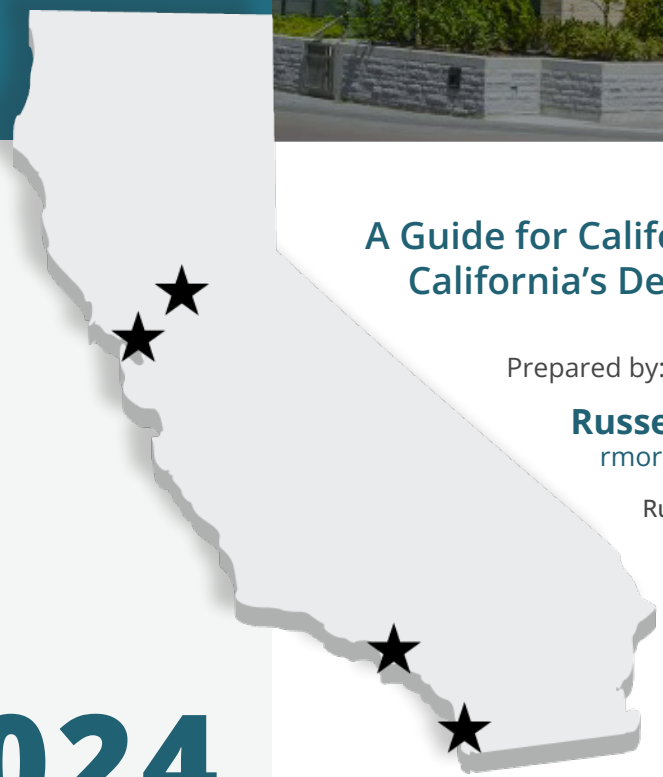

A Guide for California Developers Looking to Navigate California's Density Bonus and Housing Laws.

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What is the Density Bonus Law?

California's State Density Bonus Law (Gov. Code § 65915, et. seq.) offers significant advantages for developers creating market-rate, affordable, and senior housing, providing up to a 50% density increase for qualifying market-rate projects, an 80% bonus for 100% affordable housing projects, and up to unlimited density for certain projects meeting additional standards.

The Density Bonus Law also includes a larger package of incentives intended to help make the development of eligible housing projects economically feasible. This includes significantly reduced parking requirements, concessions from site development standards (such as reduced setbacks), and waivers of development standards.

Top 10 Questions Developers Ask Re: California's Density Bonus Law

1. **What qualifies a development project for a density bonus?**
   Any housing project with at least five (5) housing units that provides a minimum number of permanently affordable housing units qualifies for a density bonus. The density bonus provided and incentives and concessions allowed depend on the specific percentages of affordable units proposed in the project.

2. **How much of a density bonus can I receive?**
   The percentage increase in allowable density is based on the proportion of affordable or special needs housing provided. For example, an affordable housing development offering 10% of its units for rent to lower income households is entitled to a density bonus of 20%. A 100% affordable housing development with low income housing is entitled to a density bonus of 80%. In certain circumstances, unlimited density may be allowed.

3. **What are the legal requirements for the affordable housing proposed under the Density Bonus Law?**
   What constitutes affordable housing and the income/rent requirement thresholds are complicated. For example, "Lower income" is defined in the Health and Safety Code as "persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937", but generally is designated as up to 80% of Area Median Income, adjusted for family size and revised annually. "Moderate Income", "Very Low Income" and "Extremely Low Income" also have their own definitions. The maximum rent for each of the income levels is also defined by State Law. However, the Density Bonus Law provides its own set of requirements related to maximum rent for qualifying density bonus projects.

4. **What types of concessions and incentives can I request?**
   This answer varies. Depending on the project proposed, up to five (5) concessions can be requested. Under the Density Bonus Law, an applicant can request (and the local jurisdiction must accept) such concessions that result in identifiable and actual cost reductions to provide for affordable housing costs. However, many cities and counties have developed their own density bonus laws which govern the application of concessions and incentives. Understanding the range of concessions (like reduced parking requirements or modified yard requirements) helps in planning the project's design and profitability.

5. **Are there special considerations for developments near transit corridors?**
   Yes. Proximity to major transit stops can affect the density bonus and other incentives. For example, a city or county may not impose parking standards on a 100% affordable housing development within one-half mile of a major transit stop, where the development has unobstructed access to the transit stop. Additional benefits exist for market-rate projects as well.

6. **Can a density bonus be combined with other state or local housing incentives?**
   Yes. There are opportunities for stacking incentives from various sources to enhance project feasibility. For example, a project applying for a SB 35 ministerial approval process (see page 6) can also apply a density bonus pursuant to Density Bonus Law.

7. **What is the process for applying for a density bonus?**
Details on the application process, including necessary documentation and timelines, are crucial for project planning. Applications and project processing may vary from city to city. It is recommended to partner with someone familiar with this process, such as our Meyers Nave team.

8. **How does the Density Bonus Law interact with local zoning laws?**
It's important to understand how local planning and zoning regulations align or conflict with Density Bonus Law provisions. Each local zoning ordinance is different and understanding the nuances of each set of regulations is key to an efficient entitlement process. A local city or county can adopt its own density bonus ordinance, but it cannot conflict with state law.

9. **Are there additional benefits for including special needs housing or other targeted groups?**
Yes. Information on bonuses for housing that accommodates groups such as veterans, foster youth, or the homeless can influence project scope.

10. **What are the parking requirement reductions under the Density Bonus Law?**
Parking standards and ratios vary by project type but can be as little as 0.5 spaces per unit for a standard project or even no minimum parking requirements for 100% affordable housing projects in certain circumstances. As the cost to construct parking can make or break a project, it is critical to understand allowable parking reductions under Density Bonus Law.

How the Density Bonus Works

Density Bonus Amount

The density bonus is the number of additional units allowed to be built beyond the "base density," which is the number of units that could normally be built under standard local requirements without a density bonus. The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level. Critical for determining the density bonus is to determine the base density allowed for a site, either based on dwelling units per acre or FAR (floor area ratio).

Projects Entitled to a Density Bonus

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- 100% of the housing units (other than manager's units) are restricted to very low, lower, and moderate income residents (with a maximum of 20% moderate).
- At least 10% of the housing units are for transitional foster youth, disabled veterans, or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobile home park age-restricted to senior citizens (no affordable units required).

In this Issue

Have questions?
Contact us.

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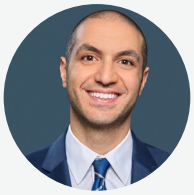

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Incentives & Concessions

In addition to the density bonus, the city or county is also required to provide one or more (and up to five) incentives or concessions to each project which qualifies for a density bonus (except that market-rate senior housing projects with no affordable units, and land donated for very low income housing, generally are not entitled to incentives or concessions). A "concession" or "incentive" is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed-use zoning; or
- Other regulatory incentives or concessions which result in identifiable and actual cost reductions.

Establishing what can be requested as an incentive or concession is paramount to a successful project. It is recommended to partner with someone familiar with this process, such as our Meyers Nave team, to work with local cities and counties on establishing what can be considered an incentive or concession.

Restrictions

Rental Units. Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55-year term for very low or lower income units (formerly only a 30-year term was required).

For Sale Units. Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.

Local Government Processing of Density Bonus Applications

Under new legislation effective in 2019, local governments are required to notify developers what information must be submitted for a complete density bonus application. Once a development application is determined to be complete, the local government must notify the developer of the level of density bonus and parking ratio that the development is eligible to receive. If the developer requests incentives or concessions, or waivers of development standards, the local jurisdiction is required to notify the developer if it has submitted sufficient information necessary for the local government to confirm qualification for such requests.

Special Circumstances

- **100% Affordable Projects.** Recent legislation mandates that local governments provide an 80% density bonus for housing projects where all units, except for a manager's unit, are lower income units, with up to 20% for moderate income. If such a project is within a half mile of a major transit stop or in a very low vehicle travel area, there are no maximum density limits, allowing for an increase in height up to three stories or 33 feet, although this may preclude further waivers or reductions in development standards.
- **Senior Projects.** A senior citizen housing development of at least 35 units meeting the requirements of section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus.

- **Student Housing Projects.** 2019 legislation requires cities and counties to grant a 35% density bonus for housing developments that will include at least 20% of the units for low income college students.
- **Commercial Projects.** Density Bonus Law allows commercial developers to receive a "development bonus" when they collaborate with affordable housing developers either by constructing affordable housing on-site, off-site, or through donations of land or funds. This partnership can be formalized through a corporation, LLC, partnership, or a contractual agreement. To qualify for the bonus, at least 30% of the units must be for lower income residents, or 15% for very low income residents, and the benefits may include increases in development intensity, floor area ratio, height limits, or reductions in parking requirements, among other incentives.
- **Condominium Conversion Projects.** The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% of the total units to low- or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful.
- **Childcare**. Housing projects that provide childcare are eligible for a separate density bonus equal to the size of the childcare facility. The childcare facility must remain in operation for at least the length of the affordability covenants. A percentage of the childcare spaces must also be made available to low- and moderate income families. A separate statute permits cities and counties to grant density bonuses to commercial and industrial projects of at least 50,000 square feet, when the developer sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a childcare facility.
- **Land Donation.** Density Bonus Law offers a sliding scale bonus for land donations, enabling market-rate housing developers to outsource the development of affordable units to local agencies or experienced developers. This bonus applies when at least an acre of fully entitled land, equipped with necessary public facilities and infrastructure, is donated within the development boundary or close to it, allowing for a bonus of up to 35% when combined with regular density bonuses.
- **Floor Area Ratio Bonuses.** Recent legislation allows local jurisdictions to offer a floor area ratio bonus instead of a traditional density bonus for high-density affordable housing projects near public transit. To qualify, projects must allocate at least 20% of units to very low income tenants, be situated in a transit priority area or close to a major transit stop, and adhere to local height restrictions.

Environmental Review & CEQA Issues

While there is no specific California Environmental Quality Act (CEQA) exemption for density bonus projects in California, such projects often qualify for other CEQA exemptions like the Class 32 urban infill categorical exemption. This exemption applies if the project is consistent with the local general plan, is under five acres, surrounded by urban uses, not on endangered species habitat, and has no major environmental impacts, among other criteria. Other exemptions include those for high-density housing near major transit stops and affordable housing projects of up to 100 units.

The 2011 *Wollmer v. City of Berkeley* case highlighted that modifications and waivers under the Density Bonus Law do not prevent a project from qualifying for a CEQA infill exemption, even if these changes deviate from existing zoning. However, not all density bonus projects will meet the criteria for these exemptions. In such cases, further CEQA analysis might be required for approval.

Local Programs & Ordinances

Several counties and cities in California have adopted their own local density bonus ordinances or programs that either supplement or clarify the Density Bonus Law. These local ordinances are tailored to address specific housing needs or to encourage certain types of development within the community.

Some examples of California cities and counties with their own density bonus standards, guidelines, and/or programs include San Francisco (HOME-SF), Los Angeles (Transit Oriented Communities - "TOC"), San Diego (Affordable Homes Bonus Program), Santa Monica, Berkeley, Oakland, and San Jose. Each of the ordinances are unique and offer varying amounts of ministerial approval processes and/or menus of incentives to assist developers. Your Meyers Nave team can help you determine the best approach for your density bonus project and whether to use the local ordinance or the Density Bonus Law.

Additional California Housing Laws & Statutes

Market-Rate & Affordable Housing Over the past decade, the California Legislature has passed several new laws, and strengthened existing laws, to promote and even mandate the construction of both market-rate and affordable housing in California. This legislation, which often limits local discretion in rejecting housing projects, preempts conflicting local laws and may serve as a point of contention with local governments.

Housing Accountability Act (Pro-Housing Law) First passed in 1970, California's Housing Accountability Act, often referred to as the "Anti-NIMBY (Not in My Backyard) Law," aims to prevent local governments from arbitrarily denying or reducing the density of housing development projects that comply with existing zoning and planning standards. This law has been amended several times and has quickly become the most powerful tool in a developer's toolkit. This law ensures eligible housing projects that meet objective local criteria be approved unless certain limited findings can be made by a local government to justify denial.

SB 330 (Limitations to Local Authority for Housing Developments) California Senate Bill 330 (SB 330), enacted in 2019, and part of the Housing Accountability Act, limits local government authority to impede construction of much needed housing. SB 330 limits the ordinances and policies that can be applied to housing developments and establishes a preliminary application process. When an applicant files a preliminary application under SB 330, a project is only subject to the regulations and policies in place at the time the preliminary application was deemed complete. Moreover, it imposes deadlines to ensure the timely processing of housing entitlements, limits the number of public hearings, and prohibits a "net loss" of existing units.

Builder's Remedy The "Builders Remedy" is a legal provision in the Housing Accountability Act that allows developers proposing a qualifying housing project with a minimum percentage of affordable housing to bypass certain local zoning regulations and general plan standards in cities and counties that have failed to have their applicable housing element certified by the State within the required time period. In such cases, developers can propose housing projects that may not fully comply with existing zoning laws and general plan standards, provided site-specific and project-specific criteria are met. This remedy is intended to accelerate the development of affordable housing and encourage cities and counties to meet their housing obligations under State law.

Until very recently, the Builder's Remedy did not have statutory or regulatory guidance to assist developers (and local municipalities) in determining when projects are eligible for the Builder's Remedy and how to process eligible projects. However, Governor Newsom recently signed a series of bills refining and clarifying the scope and applicability of the Builder's Remedy. AB 1893 (Wicks) creates a definition and structure for a Builder's Remedy Project by, among other things, (1) establishing specific affordability requirements for Builder's Remedy Projects (in certain cases lowering the affordability requirement for mixed-income projects); (2) introducing minimum and maximum densities for Builder's Remedy Projects, and (3) prohibiting siting a Builder's Remedy Project adjacent to a site that was recently used for heavy industrial purposes. AB 1893 also provides guidance regarding the interplay of Builder's Remedy and the State Density Bonus Law (including increased incentives and setting the base density as the Builder's Remedy maximum density) and the applicability of objective standards. Finally, AB 1893 provides protections for existing Builder's Remedy Projects that have been deemed complete as of January 1, 2025. AB 1886 (Alvarez) is far more limited in scope, but provides a very important clarification in housing element law that a local jurisdiction cannot self-certify its housing element as being "substantially compliant" with State Housing Element Law until it has received an affirmative determination to that end from the California Department of Housing and Community Development (HCD) or a court. AB 1886 also clarifies that a housing element's compliance status is determined at the time the SB 330 preliminary application is submitted for a qualifying Builders Remedy project.

SB 35/SB 423 (Streamlined, Ministerial Approval) California Senate Bill 35 (SB 35), enacted in 2017, is legislation designed to streamline the approval process for housing developments in cities that have not met their regional housing needs, particularly affordable housing quotas. SB 35 allows for a faster, ministerial approval process without the requirement for often lengthy environmental review under CEQA if the project meets certain site-specific and project-specific criteria and agrees to pay prevailing wages during construction of the project. This bill aims to expedite housing construction to address California's severe housing shortage and affordability crisis.

SB 423 (2023), among other things, extends the sunset date of SB 35 until January 1, 2036, expands the ministerial processing of SB 35 to applicable portions of the Coastal Zone beginning in January 2025 (with certain limitations), allows a SB 35 development to be located within a high or very high fire hazard severity zone, and removes the prevaling wage and skilled and trained workforce requirements, and instead requires a development proponent to certify to the local government that certain wage and labor standards will be met, including a requirement that all construction workers be paid at least the general prevailing rate of wages. Please contact your Meyers Nave team to help determine whether your project is eligible under SB 35 and SB 423.

AB 2011/SB 6 (Residential Development in Commercial Zones)

AB 2011, enacted in 2022, and amended by AB 2243 in 2024, requires CEQA-exempt, streamlined approval of qualifying multi-family housing developments on commercially-zoned property. An important tool for the development in housing on commercially-zoned parcels, the applicable criteria differs based on whether the development is a 100% affordable housing development, or mixed income housing located in a commercial corridor.

SB 6, also enacted in 2022, allows for residential development on property zoned for retail, parking, and office space without the requirement for a rezoning of the property. In comparison to AB 2011, SB 6 does not offer a ministerial approval pathway unless the project otherwise qualifies under SB 35. However, SB 6 projects offer lower minimum density requirements and no affordability requirement, except that the project must satisfy any applicable inclusionary housing requirement of the city or county in which the property is located. Nonetheless, SB 6 projects must be housing development projects that are either entirely for residential units or mixed-use projects with at least 50% of the square footage dedicated to residential use.

Both AB 2011 and SB 6 have a number of additional site-specific and project-specific eligibility criteria so please contact your Meyers Nave team to help determine whether your project is eligible under these housing laws.

Coastal Act When housing is proposed in California's Coastal Zone, the housing laws which focus on encouraging the development of housing often clash with the California Coastal Act's focus on environmental protection. In particular, SB 35, as amended by SB 423, and the Density Bonus Law promote development of housing in the Coastal Zone. As discussed above, SB 423, signed by Governor Newsom in late 2023, extends SB 35's streamlining provisions into the Coastal Zone starting January 1, 2025, subject to specifications including a property's susceptibility to sea level rise, proximity to wetlands or prime agricultural land, and existing zoning.
Legislation effective in 2019 requires that the Density Bonus Law for applicable housing development projects in the Coastal Zone be applied in a manner that is consistent and harmonized with the California Coastal Act. This legislation attempts to clarify a 2016 appellate court ruling, *Kalnel Gardens, LLC v. City of Los Angeles*, which found that a proposed housing project that violates the Coastal Act as a result of a density bonus could be denied on that basis. The court in Kalnel Gardens held that the Density Bonus Law is subordinate to the Coastal Act, but the 2019 statutory language attempts to strike a balance to achieve the state's goals of increasing the supply of affordable housing in the coastal zone while also protecting coastal resources and coastal access.

Need Assistance?

Our attorneys can help answer your questions about California state housing laws and how they may apply to or impact your development project.

Our decades of experience with these complex housing laws and our experience with local cities and counties throughout the State will help you develop the best possible project.

Please contact us with any questions or for additional support regarding this Developers' Toolkit.

We know California

Let our team guide you through the complex nuances of California's Real Estate & Housing Laws.

Navigating California's Ever-evolving Real Estate and Housing Landscape

Our clients benefit from our depth of experience throughout the state, allowing us to provide invaluable insight and effective representation.

Real Estate and Housing, especially affordable housing, is a complex and dynamic area of California law. We are known as "go-to" counsel for our integrated resources, deep understanding of markets, and creative strategies.

Drawing on experience representing all types of stakeholders across California, we offer comprehensive advice on real estate transactions, regulatory compliance, and litigation. We handle the intricacies of purchasing, developing, owning, using, encumbering, and transferring land and property interests.

Our clients include business entities, public entities, family offices, nonprofits, and public-private partnerships, tackling projects from single-parcel developments to complex, multi-phase endeavors. With a 360-degree perspective and experience on both sides of the courtroom, we anticipate every party's interests and concerns, helping clients achieve their financial and business goals.

We know California Real Estate & Housing. **Contact us**.

Connect with our
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