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"Denser, Higher, and Beyond": Understanding State Density Bonus Law and Senate Bill 79 (2025)

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This paper analyzes State Density Bonus Law and Senate Bill 79, two major state housing tools available to developers for overriding local zoning density and development standards. Almost every legislative session since 2017 has seen amendments to State Density Bonus Law to further expand allowable maximum density and associated benefits to facilitate housing development. Most recently, the passage of Senate Bill 79 ("SB 79") mandates local governments to allow multifamily high-density housing near high-frequency transit stops. SB 79 may be seen as an additional "layer" of density bonus beyond what Density Bonus Law would provide to projects. These laws interact to create powerful incentives for housing developments that include affordable units but also create additional regulatory complexities for cities to navigate. This paper provides an overview of these laws and aims to explain the challenges that cities face in reviewing and making decisions on housing projects eligible to utilize these statutes. We also share frequently encountered questions and potential issues in implementing these laws and managing expectations of staff, reviewing bodies, and the public.

I. State Density Bonus Law (Gov. Code §§ 65915 - 65918)

Density Bonus Law is deeply rooted in the local government land use framework. Many city attorneys are (sometimes painfully) familiar with the fundamentals of this statute and are frequently asked to advise on its intricacies. As a refresher on the basics, Density Bonus Law requires general law and charter cities to grant a density bonus and other incentives, concessions or waivers to projects setting aside certain percentages of affordable units to low, lower or moderate income households defined by the Health and Safety Code. This requirement extends to housing for transitional foster youth, disabled veterans, homeless persons, or low income college students.[1] To qualify with affordable units, the project must offer for-sale or rental units to lower-income or very-low-income households, or for sale units to moderate-income households. The density bonus is then generally determined by a sliding scale proportional to the percentage of affordable units offered. Projects may also become eligible for density bonus through pathways other than offering affordable units, such as donating land to the city[2] or proposing a senior housing or senior mobilehome park project, including residential care facilities for the elderly.[3]

A. *Benefits for Eligible Projects Under State Density Bonus Law*

1. <u>The project can build additional units beyond the base density.</u>

The applicable "density bonus" is the additional units that the city must allow over the "base density", or the "maximum allowable residential density". This term is defined as the greatest number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, whichever is highest.[4] Often times, however, neither of these planning documents will contain a dwelling units-per acre density, especially in non-residential zoning districts or plan areas that allow residential development through additional discretionary approvals. If there is no base density, then the maximum number of units allowed would be determined by estimating the realistic development capacity of the site based on the objective development standards applicable to the project. The developer may provide a base density study to the city for this purpose, and the city must accept the study as long as it includes all applicable objective development standards.[5] All fractional numbers are rounded up for calculations pursuant to Gov. Code section 65915(q).

[1] Gov. Code section 65915(b)(1)(A)-(G).
[2] Gov. Code section 65915(g).
[3] Gov. Code section 65915(b)(1)(C), (f)(3)(A).
[4] Gov. Code section 65915(o)(6).
[5] Gov. Code section 65915(o)(6)(A).

Beginning in 2024, Density Bonus Law also provides additional density bonuses that may be "stacked" on top of the initial set of bonus units.[6] Stacking is available to projects that set aside enough affordable housing to first qualify for a 50 percent density bonus and then offers additional affordable units that are for sale or rental to very-low and moderate income households. In doing so, total affordable units in the project cannot exceed 50 percent (100 percent affordable projects do not get stacking bonuses). Together, some projects can achieve 100 percent density bonus, doubling the additional units that would be allowed beyond the base density.

The density bonus awarded to qualifying senior housing (including Residential Care Facilities for the Elderly) and mobilehome park projects is a set amount of 20 percent of the number of senior housing units.[7] Likewise, housing projects for foster youth, disabled veterans, or homeless persons also receive a set 20 percent density increase based on the number of the type of units that qualify the project for density bonus in the first place.[8] Finally, 100 percent affordable housing projects will receive an 80 percent density bonus based on the number of lower-income units. If such project is located within one-half mile of a major transit stop, or within a very low vehicle travel area, Density Bonus Law prohibits the city from imposing any maximum density controls.[9] Thus, the project essentially would have unlimited density.

2. <u>The project can use affordable units set aside under State Density Bonus Law to satisfy a city's inclusionary housing requirements.</u>

To qualify for density bonus through affordable units, the project must set aside a certain percentage of its "total units" for households at various income levels. Density Bonus Law specifies that "total units" includes all units designated as affordable to satisfy local inclusionary requirements.[10] As such, density bonus projects may use the same set of affordable units to meet the city's inclusionary requirements and also to qualify for state density bonus. Because of this, we now frequently see a housing development proposing affordability percentages that exceed the local inclusionary requirements in order to become eligible for a density bonus under state law.

3. <u>The project can override local regulations via incentives, concessions and waivers.</u>

Perhaps the most powerful aspect of Density Bonus Law is the availability of incentives, concessions and waivers for eligible projects. These elements are different tools that allow density bonus projects to override local standards and regulations, including objective development and design standards. Another benefit is that density bonus projects are able to rely on incentives/concessions and waivers to comply with local standards that the project may not otherwise meet. The Housing Accountability Act, for example, provides that the receipt of a density bonus, incentive, concession, or waiver under Density Bonus Law cannot be the basis for a finding that a housing development project is inconsistent with applicable plan, program, policy, ordinance, standard, requirement, or other similar provisions, including objective design standards.[11]

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[6] Gov. Code section 65915(v).
[7] Gov. Code section 65915(f)(3)(A).
[8] Gov. Code section 65915(f)(3)(B).
[9] Gov. Code section 65915(f)(3)(D).
[10] Gov. Code section 65915(o)(9). *See also Latinos Unidos del Valle de Napa y Solano v. County of Napa ("LUNA")* (2013) 217 CA4th 1160.
[11] Gov. Code section 65589.5(j)(3).

It is important to note that a project will receive these concessions, incentives and waivers as long as it qualifies for a density bonus, even if it does not seek utilize a density bonus. Recent development trends suggest that incentives, concessions and waivers may have become more attractive to developers than the potential density increase. Cities have seen many projects that do not seek to build additional units but only set aside affordable units in order to be able to obtain the ability to reduce or waive local development regulations, design standards, and other rules.

Incentives or Concessions

Cities are required to grant one or more "incentives" or "concessions" to a project that qualifies for a density bonus.[12] The specific number of incentive/concessions is determined based on the percentage of affordable units provided and the level of affordability. Incentives/concessions are defined as (1) 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; (2) approval of mixed use zoning; or (3) other regulatory incentives or concessions, which actually result in identifiable and actual cost reductions.[13] These are broad definitions and have increasingly been cited by developers to cover a wide range of local standards, regulations, policies, and requirements. The number of incentives or concessions available depends on the percentage of affordable units set aside by the project.[14] A project that qualifies for a density bonus through affordable units and that includes a childcare facility on its premises or adjacent to the project site will also receive an additional density bonus and an additional concession or incentive that makes the childcare facility feasible, unless the city is able to find that the community has adequate childcare facilities.[15]

As many city attorneys know, cities have limited discretion to deny concession and incentives requests. At the outset, the city must grant the incentive or concession unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or rents, would cause a "specific, adverse impact" on public health or safety or historical property, or would be contrary to state or federal law.[16] The city bears the burden of proof for the denial of a requested concession or incentive.[17] This is a high threshold to meet for several reasons. First, the city cannot require developers to provide financial proformas or to demonstrate that the incentive or concession is necessary to make the project financially feasible.[18] Additionally, the definition of "specific, adverse impact" is the same stringent definition used in the Housing Accountability Act—requiring a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions in effect when a preliminary application is submitted under Government Code section 65941.1. Lastly, the city cannot require a developer to obtain a general plan amendment, local coastal plan amendment, zoning change, additional studies, or other discretionary approval just because the project requests a concession or incentive.[19]

Density Bonus Law does set some parameters around incentives and concession requests. At the outset, the city *can* require "reasonable documentation" from the developer to show that the project is eligible for a concession or incentive or to demonstrate that the incentives/concession

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[12] Gov. Code section 65915(d).
[13] Gov. Code section 65915(k).
[14] Gov. Code section 65915(d).
[15] Gov. Code section 65915(h).
[16] Gov. Code section 65915(d).
[17] *Id.* at (d)(4).
[18] *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549.
[19] Gov. Code section 65915(j)(1).

request meets the statutory definition.[20] Further, 2025 amendments to the Density Bonus Law limit concessions for commercial floor area ratio (FAR) to 2.5 times the base FAR, and provide that cities are not required to approve incentives or concessions for a hotel, motel, bed and breakfast inn, or transient lodging component of a mixed use project (except for residential hotels as defined by state law).[21] Finally, the requirement to grant concessions and incentives does not require the city to provide "direct financial incentives" for the housing development, including providing publicly owned land or granting waivers for fee or dedication requirements.[22]

Waivers or Reductions in Development Standards

In comparison to concessions and incentives that relate to cost reductions and project feasibilities, waivers under the Density Bonus Law relate to whether the project can be physically built under the city's normal standards. Specifically, cities are not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives.[23] Similar to the denial thresholds for concession and incentive requests, the city may only deny a waiver request if it finds that waiving the development standard at issue would cause a specific, adverse impact on public health or safety, or historical property, or would be contrary to state or federal law.[24] Again, as noted above, this is a high threshold to meet.

Waivers are in addition to the number of incentives or concessions that a project may receive, and there is no limit on how many development standards a project may waive.[25] Common examples of waivable development standards include setbacks, height, lot coverage, common open space, and external façade design requirements. It should be noted, however, that a 100 percent affordable project which receives a waiver from maximum density controls and additional height increases is not entitled to receive additional waivers, unless the city agrees to provide them.[26]

Recent caselaw has emboldened developers when using waivers. Historically, waivers were often viewed as a tool that allowed developers to waive development standards that prevented a project's density bonus units from being built. For example, if a project received a 20 percent density bonus, a project might need to waive an otherwise applicable height limit in order to physically build the project with the extra units. Now, developers claim waivers in order to excuse compliance with any development standard that would interfere with the particular project the developer wants to build. Oftentimes, the waiver requests appear to have little relation to the ability of the project to accommodate units. In taking this approach to waivers, developers rely on *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755 and *Wollmer v. City of Berkeley (2011)* 193 Cal. App. 4th 1329. Those cases hold that developers cannot be required to remove amenities like courtyards in order to avoid the need for the density bonuses and that a "city would be in violation of the Density Bonus Law if it failed to waive development standards that would physically preclude construction of a project."[27] It is common to for cities to receive a letter from a developer citing these cases and arguing they require the city to grant a waiver if it would physically preclude construction of a project exactly as designed by the developer.

4. <u>The project receives reduced parking requirements in addition to incentives,</u>

[20] *Id*.
[21] Gov. Code section 65915(l)(1) and (2).
[22] Gov. Code section 65915(l)(3).
[23] Gov. Code section 65915(e).
[24] *Id.*
[25] *Id.*
[26] Gov. Code section 65915(e)(3).
[27] *Bankers Hill 150,* 74 Cal. App. 5th at 780.

concessions and waivers.

Separate from the incentives/concessions and waivers described above, upon developer request cities cannot require density bonus-eligible projects to provide more parking beyond the reduced parking ratios set by statute.[28] Under current law, these ratios are: 1 space for 0-1 bedroom, 1.5 spaces for 2-3 bedrooms, 2.5 for 4 or more bedrooms. Additionally, for certain projects such as 100 percent affordable projects within 0.5 miles of a major transit stop, the city cannot require any parking (unless the city has conducted parking study within the last 7 years to show that higher parking ratio is warranted, then the city can require the base parking ratio above).[29] Where parking is required, the developer may provide tandem or uncovered parking onsite, but not on-street parking.[30] This is another attractive feature of Density Bonus Law and motivates developers to provide affordable units in order to benefit from reduced parking requirements.

5. Liberal constructions under State Density Bonus Law in favor of the project.

Gov. Code section 65915(r) instructs Density Bonus Law to be "interpreted liberally in favor of producing the maximum number of total units." In practice, housing developers and regulatory agencies such as the State Department of Housing and Community Development (HCD) have relied on this provision to apply or interpret rules in favor of housing projects and override local discretion. The statute is similarly deferential to residential developments such as giving developers the ability to dictate the base density study to determine applicable base units, providing flexible approaches to reduce local standards and discretion, and expanding the types of projects that can qualify for density bonus benefits. All of these reflect the statutory goals to encourage affordable units, bridge funding gaps, and stimulate housing production.

6. The ability to assert legal remedies against denial of an incentive, concession, or waiver request, or the density bonus project.

Cities have the burden of proof for the denial of a requested concession, incentive, or waiver. Density Bonus Law provides developers the ability to initiate litigation against a city if they refuse to grant a requested incentive, concession or waiver.[31] If a court determines that the city's refusal is in violation of Density Bonus Law, it is required to award attorney's fees and cost of suit to the developer.[32] Relatedly, denying a density bonus project in violation of the statute likely also triggers a violation of the Housing Accountability Act; that law also gives a broader cause of action for applicants, individuals eligible for residency in the project, and housing advocate organizations to initiate litigation against the city.[33]

B. *Additional Density Bonus Law Provisions for Special Situations*

In addition to the fundamentals under Section 65915, the statute also contains several provisions under Sections 65915.1 – 65917.5 setting forth additional restrictions or other forms of bonuses and benefits. These situations are less common, but it is still helpful to be aware.

[28] Gov. Code section 65915(p).
[29] Gov. Code section 65915(p)(3)-(7).
[30] Gov. Code section 65915(p)4).
[31] Gov. Code sections 65915(d)(3); (e)(1).
[32] *Id.*
[33] Gov. Code section 65589.5(k).

1. Density Bonus for Condominium Conversions.[34]

Condominium conversion projects that provide at least 33 percent of the total units for low- or moderate-income households, or 15 percent to lower-income households are entitled to a density bonus of 25 percent over the number of apartments, or other incentives of equal financial value, which may include reducing or waiving local conditions of approval for a condo conversion project. Cities may impose conditions with the bonus award but are not required to provide cash transfer payments or other monetary compensation as a part of the award.

2. Density Bonus for Commercial Projects.[35]

Commercial projects that partner with affordable housing developers to construct affordable housing at the project site, or at another site close to schools, employment or major transit stops, are entitled to receive a "development bonus". This bonus is not in the form of increased density but instead is comprised of "mutually agreeable incentives" between the city and developer. The statute gives a non-exhaustive list of examples including increase in height and floor area ratio, and reduction in parking. To receive the development bonus, the partnership agreement must be approved by the city.

3. Floor Area Ratio (FAR) Bonus for High Density Infill Projects Near Transit.[36]

An urban infill, high density project in a transit priority area or within 0.5 miles of a major transit stop may request the city grant a FAR bonus in lieu of the traditional units density bonus. To be eligible, the project must meet location, density, and affordability requirements which requires 20 percent affordable units to very low income households for at least 55 years. The project must also meet local height limits in the underlying zone. For a mixed-use project, the FAR bonus only applies to the residential portion of the project.

4. Floor Area Ratio Bonus for Commercial and Industrial Projects with Child Care Facilities.[37]

As discussed above, Section 65915 provides an additional density bonus for housing projects that provide childcare facilities. Separate from that provision, commercial and industrial projects of at least 50,000 square feet may receive an FAR bonus when the project sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a childcare facility. The project must continue to comply with height, setback, lot coverage, and other zoning district requirements as well as health and safety requirements for construction. The childcare facility may be proposed at the project site or offsite as agreed upon by the city and developer. Once the childcare facility is established, the city must make a finding that childcare needs have decreased or are no longer present before the facility may be changed for use, reduced in size, or closed.

C. *Common Issues in Applying SDBL and Processing Applications*

1. Adopting local density bonus ordinances for state and local bonuses.

Density Bonus Law requires cities to adopt ordinances to implement the state law

[34] Gov. Code section 65915.5.
[35] Gov. Code section 65915.7.
[36] Gov. Code section 65917.2.
[37] Gov. Code section 65917.2.

provisions.[38] Practically, more cities have elected to adopt ordinances that defer to state law because of the constant legislative amendments to the Density Bonus statute. The more helpful document for processing applications is the city's density bonus application procedures and checklists, which are required by Government Code section 65915(a)(3). This information is often included as a part of the city's planning application checklist to cover the density bonus project narrative and any requests for incentive/concession and waiver requests.

Additionally, some jurisdictions elect to establish local density bonuses and development incentives separate from the state Density Bonus requirements. This may be in the form of additional bonuses beyond what qualifying projects may receive under state law, or may be "gap bonuses" that are provided as a local incentive to projects ineligible to receive a state density bonus. This voluntary practice is permitted by Government Code section 65915(n); municipalities should be mindful that receipt of local bonuses do not impact state density bonus eligibility, nor are they factored into calculation of base density for those purposes.

2. <u>Requests to waive or to receive concessions or incentives for "non-traditional" standards and requirements.</u>

As defined by Government Code section 65915(d) and (e), the range of local requirements that may be subject to an incentive/concession or waiver request is fairly broad. However, Section 65915(j)(2) also provides that the density bonus statutes do not require local jurisdictions to waive "local ordinance or provisions of a local ordinance unrelated to development standards." Traditionally, development standards are thought to be regulations that relate to the formation, construction and design of the building. Nonetheless, various jurisdictions have increasingly observed developers requesting concessions/incentives and waivers for local requirements that are not intuitively associated with the building development stage.

One example is a developer requesting a concession or waiver against the city's "minimum density" requirement. A minimum density establishes a threshold number of units per acre that a residential project must achieve in order to propose development at the site subject to that density. The effect of such a request is to reduce the number of dwellings that are produced for the site. On one hand, it could be argued that such a request could be entertained by the city because a minimum density requirement physically precludes construction of the density bonus project, or the elimination of which would result in actual and identifiable cost reductions. On the contrary, however, it seems more persuasive that such request would be against the fundamental structure of Density Bonus Law where a base density (which is established by the minimum density standard) is necessary to calculate and award a density bonus. Likewise, such a request also seems to be against the intent of Density Bonus Law to encourage housing production and reduce financial strains on residential development, as it would reduce the number of dwelling units constructed. Such a request, if entertained, may also have negative implications for projects proposed on housing element inventory sites, which are required by state housing element law to comply with minimum density requirements in many instances. The city's ability to maintain housing production capacity under the No Net Loss statute will likewise be impaired.[39]

Other examples encountered by jurisdictions include incentive/concession requests for in-lieu fees and impact fees, and waiver requests from mixed-use projects to reduce development standards that apply to the commercial or non-residential portion of the development. In regard to fees, it should be first noted that Section 65915(l)(3) provides that cities are not required to provide

[38] Gov. Code section 65915(a).

[39] The No Net Loss requirements for housing element inventory sites are located under Gov. Code section 65863.

"direct financial incentives" for a density bonus project. Equally important is that Section 65915.1 prohibits the application of affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a density bonus project's affordable units. On those bases, it appears municipalities are in a good position to decline concession/incentive requests for impact fees or other similar charges because doing so essentially provides financial assistance to the project, which is not required by statute. Cities may not be in as strong a position for in-lieu fees because those fees are generally intended to substitute a development standard or requirement, which in itself is waivable or for which a concession/incentive can be granted.

In mixed-use project situations, if a development standard applies solely to the commercial/nonresidential portion of the project and there is evidence supporting the argument that the standard is separable from the residential portion, then the city may be in a better position to determine that said standard is not waivable or subject to a concession/incentive request. It may also be the case that it's difficult to reach such conclusion, because it has become increasingly easy for a developer to demonstrate a particular standard precludes construction or results in cost reduction for any residential development. It is certain, however, that if the mixed-use project contains a hotel, motel, bed and breakfast inn, or other types of transient lodging except for a residential hotel defined by state law, the city is not required to grant a request for incentives, concessions, or waivers towards that project component.

3. Complications arises where "base density" is absent or only partially expressed in the city's land use documents.

As discussed in prior sections, Density Bonus Law now provides a mechanism to calculate base density in the event that the city's land use authorities do not provide a dwelling units per acre density and requires the city to accept a base density submitted by the developer. This statutory mechanism is triggered when there is no dwelling unit/acre density in the city's "applicable zoning ordinance, specific plan, or land use element of the general plan." As city attorneys know, many housing element site inventories now set a "permitted dwelling units per acre" for development site candidates as a part of the requirement to include sufficient parcels and densities to accommodate their regional housing need obligations. It would seem reasonable that these housing element densities are enforceable standards and constitute base densities for those sites in the inventory. In a 2023 technical assistance letter to the County of El Dorado, the State Department of Housing and Community Development (HCD) seemed to acknowledge that in calculating the maximum base density, "additional planning documents such as Redevelopment Plans, Community Plans, Small Area Plans, Precise Plans, Master Plans, etc., may also apply."[40] At a fundamental level, cities should consider aligning housing element density standards or projections with those contained in the land use element, specific plan, or zoning ordinance, if not already carried over or if site rezonings are not yet complete.

4. Can Accessory Dwelling Units (ADU) be counted towards the base density for Density Bonus Law eligibility?

A question that has become increasingly common is whether ADUs could be included in the base density in order for the project to qualify for a density bonus. This situation may arise in development proposals that are made up of multiple single-family subdivisions proposed as one project and each home is accompanied by a proposed ADU. It seems cities would find support in the ADU statute to reject counting ADUs towards the base density, since the ADU statute provides

[40] See HCD Letter of Technical Assistance at page 2: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/ElDoradoCounty-TA-030923.pdf (last accessed March 20, 2026)

that ADUs "do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot."[41] Based on this language, there is some authority for a city to conclude that ADUs do not contribute to the parcel's density production and thus would not be considered as separate units for the purposes of calculating density.

However, and to the contrary, HCD stated via a technical assistance letter to the City of Carlsbad dated February 16, 2024 that a project consisting of three primary units and two ADUs can qualify for state density bonus.[42] However, that letter also stated that ADUs cannot be counted when "calculating a density bonus", because ADUs do not count towards the base density – seemingly contradicting HCD's prior conclusion in the letter. In another technical assistance letter to the City of Antioch dated November 15, 2024 regarding a project with 95 primary units and 47 ADUs, HCD similarly stated that developers can choose to use ADUs to qualify a project for a state density bonus if all ADUs proposed are counted towards the base density.[43] These opinions do not provide much clarity regarding how the density bonus should be calculated using the rationale outlined in the letters.

5. Requiring density bonus affordability/regulatory agreements and income verification enforcement.

Many cities across California implement a robust affordable housing program in conjunction with state density bonus entitlements and local inclusionary housing requirements. Affordable housing agreements or similar regulatory agreements are executed between the city and developer to restrict tenant income levels as proposed by the project to qualify for Density Bonus Law. Cities have the flexibility to dictate several aspects of how the affordable housing/density bonus program would be run, including how the restrictive covenant would be executed and how tenant income would be verified. Density Bonus Law requires affordable rental units and units in a foster youth housing project be restricted affordable for 55 years; local ordinances can also require longer affordability periods for units that are required as a condition for residential development under local ordinances and that are not financed with low-income housing tax credits.[44] Effective in 2026, AB 1170 (2025) would prohibit cities to charge a monitoring fee for 100 percent affordable density bonus projects meeting certain requirements, including if the project is subject to a recorded regulatory agreement with HCD, the state Tax Credit Allocation Committee, or the California Housing Finance Agency.[45] These issues are valuable for cities to consider in implementing affordable housing and density bonus programs.

II. Senate Bill 79 ("Abundant and Affordable Homes Near Transit Act")

Senate Bill (SB) 79, passed in 2025, preempts local standards to allow higher density, multifamily housing near high-frequency transit stops. SB 79 follows failed attempts to adopt similar legislation in 2018 (SB 827) and 2020 (SB 50). This section of the paper outlines the requirements of SB 79, the limited options it provides cities when implementing the law, and how

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[41] Gov. Code section 66314(c).
[42] See https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/carlsbad-hau565-ta-02162024.pdf (last accessed March 20, 2026).
[43] See https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/antioch-hau-1174-ta-111524.pdf (last accessed March 20, 2026).
[44] Gov. Code sections 65915(c); 65915.2.
[45] Gov. Code section 65915.3.

it interacts with the other state laws. The principal elements of the law go into effect on July 1, 2026.[46]

A. *Where Does SB 79 Apply?*

SB 79's stated purpose is to facilitate the construction of more homes near transit. However, it does not apply statewide. Rather, the law only applies in "urban transit counties", which is defined as a county with more than 15 passenger rail stations.[47] That limits the law's application to the following counties: Alameda, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara. Missing from this list are some of the state's counties with the largest counties by population, including some counties with relatively extensive transit systems, like Contra Costa County.[48]

Within urban transit counties, housing projects are eligible to utilize SB 79 if they are within one-quarter mile of a qualifying transit-oriented development ("TOD") stop or within one-half mile of a qualifying TOD stop if located in a city with a population of at least 35,000.[49] There are two different classification of TOD stops:

- "Tier 1 transit-oriented development stop" is a TOD stop served by heavy rail transit or very high frequency commuter rail (at least 72 trains per day across both directions).[50]

- "Tier 2 transit-oriented development stop" is a TOD stop served by light rail transit, by high-frequency commuter rail (at least 48 trains per day across both directions), or by bus rapid transit service with headways of 20 minutes or less during the morning and afternoon peak commute periods.[51]

Currently, Tier 1 TOD stops include all BART and Caltrain stations in the Bay Area, and LA Metro stations on certain high frequency lines. However, existing transit stops may change from Tier 1 to Tier 2, or vice versa, over time as service frequencies adjust. Importantly, a rail line qualifies as high-frequency or very high frequency if regular service intervals, not including temporary service changes of less than one month or unplanned disruptions, met the frequency standard at any point in the past 3 years.[52]

If new Tier 1 or Tier 2 TOD stops are added in the future, and those stops were identified in the applicable regional transportation plan on or before January 1, 2026, then SB 79 applies fully to those stops.[53] If the new stops were not identified in the applicable regional transportation plan, then the new stops are only subject to SB 79 if they qualify as a Tier 1 TOD stops.

[46] SB 79 does not apply in unincorporated areas until the 7th regional housing needs allocation (RHNA) cycle.
[47] Gov. Code section 65912.156(q).
[48] This is a narrower scope than either SB 827 ad SB 50. Presumably these limitations were part of the legislative negotiation to secure necessary votes for passage.
[49] Gov. Code section 65912.157(a).
[50] Gov. Code section 65912.156(n), (r).
[51] Gov. Code section 65912.157(e), (o). Bus rapid transit service is defined in Public Resources Code section 21060.2 and must include, among other things, dedicate bus lanes or separate right-of-way, transit signal priority, and all-door boarding.
[52] Gov. Code section 65912.156(e), (r).
[53] Gov. Code section 65912.156(p).

If the addition of new passenger rail stations causes a county to become a "urban transit county" in the future, the county becomes subject to SB 79, except that Tier 2 TOD stops would not include any bus stations.

B. *What Does SB 79 Require and Allow?*

1. Projects must meet certain basic requirements.

SB 79 applies to housing development projects, as that term is defined in the Housing Accountability Act.[54] Housing development projects include: 1) residential projects consisting of at least two (2) units, 2) mixed use developments with at least two-thirds of the square footage designated for residential use, 3) transitional housing or supportive housing, or 4) farmworker housing. No part of the project may be designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging.

To qualify for SB 79, a housing development project must meet the following requirements[55]:

- Be located within one-half (1/2) mile of a TOD stop in cities with a population of at least 35,000, or within one-quarter (1/4) mile of a TOD stop in cities with populations of less than 35,000[56];
- Contain at least five (5) residential units;
- Be on a site zoned for residential, mixed-used, or commercial uses;
- Have a minimum density of at least 30 units/acre, or the applicable local density, whichever is greater;
- The average size of the proposed residential units may not exceed 1,750 habitable square feet; and
- Meet affordability requirements (detailed below).

2. Qualifying projects are entitled to greater height, density, and FAR.

Proposed projects that meet SB 79's requirements are entitled to utilize height, density, and residential floor area ratio (FAR) standards established by the law.[57] The exact standards differ depending on whether the site is located near a Tier 1 or Tier 2 TOD stop, whether the site is within ¼ mile or ¼ mile from the TOD stop, and whether or not the site is in a City with a population of at least 35,000:[58]

For all Cities				
	Distance to TOD Stop	*Maximum Density*	*Maximum Height*	*Maximum FAR*
Tier 1 TOD Stop	Within ¼ mile	120 units/acre	75 feet	3.5
Tier 2 TOD Stop	Within ¼ mile	100 units/acres	65 deet	3.0

54 Gov. Code sections 65912.156(g); 65589.5(h)(2).
55 Gov. Code section 65912.157(a)(1)-(3).
56 Distance is measured in a straight line from the nearest edge of the parcel containing the proposed project to a pedestrian access point for the TOD stop.
57 Projects must also comply with the height, noise, and safety standards in A development proposed pursuant to this chapter shall be consistent with the height, noise, and safety standards of an adopted airport land use compatibility plan or Department of Defense Air Installation Compatible Use Zones. Gov. Code section 65912.157(j).
58 Gov. Code section 65912.157(a)(4)-(6).

City with Population of at least 35,000				
Tier 1 TOD Stop	Within ½ mile	100 units/acre	65 feet	3.0
Tier 2 TOD Stop	Within ½ mile	80 units/acre	55 feet	2.5

In addition, projects immediately adjacent[59] to a Tier 1 or Tier 2 TOD stop are eligible to increase the otherwise applicable density by 40 units/acre, height by 20 feet and FAR by 1.0.[60]

3. Projects must meet minimum affordability requirements.

In order to qualify for SB 79, proposed projects with more than ten (10) units must provide the following minimum level of affordable housing:

- 7% of the units for extremely low-income households;
- 10% of the units for very low-income households; or
- 13% of the units for low-income households.[61]

If a city has adopted a local inclusionary zoning standard requiring greater percentages of affordable housing than required by SB 79, the city's local standard will apply.

SB 79 projects are not allowed on sites that either: 1) require the demolition of housing units subject to any form of rent control and occupied by tenants in the last 7 years, or 2) on which residential units subject to a rent control ordinance were demolished in the 7 years. California law's generally applicable restriction on demolishing housing units also apply to SB 79 projects.[62] Additionally, projects must also comply with any applicable local demolition and anti-displacement standards.

4. Projects over 85 feet must comply with Labor Standards.

SB 79 differs from many other housing production laws enacted by the Legislature over the last decade in that it does not require developers to pay prevailing way or comply with specified labor standards on most projects. SB 79 projects are only required to meet labor standards if they are over 85 feet tall, a height which is only allowable for projects adjacent to a TOD stop.[63] Projects of this height are required to meet the same labor standards as set forth in SB 35, including the payment of prevailing wage and the use of a skilled & trained workforce. While not a specific requirement in SB 79, it is generally understood that once buildings are taller than 85 feet, they must use steel-framed construction rather than wood-framed.[64]

The labor standards required for projects over 85 feet were not part of SB 79 for most of the legislative year. After extensive negotiations, the labor provisions were added, as well as clarity that the law would not authorize the construction of hotels. As a result, "UNITE HERE", a union representing hotel workers, announced support for the bill, and the State Building and Construction

[59] Adjacent means within 200 feet of any pedestrian access point to a TOD stop. Gov. Code section 65912.156(a).
[60] Gov. Code section 65912.157(e)
[61] Gov. Code section 65912.157(d).
[62] Gov. Code section 65912.157(g),(h). Government Code section 66300.6 prohibits the demolition of existing residential units unless the project will create as many units as will be demolished, and prohibits the demolition of "protected units" unless certain requirements are met, including the replacement of the protected units. A protected unit includes units that are or were rented by lower or very low-income households within the past five years.
[63] Gov. Code section 65912.157(k).
[64] See https://calmatters.org/housing/2025/09/california-housing-near-transit/.

Trades Union of California took a neutral position, rather than oppose the law.[65] In the past, the Building Trades generally opposed bills that eased restrictions on residential construction without minimum labor standards, which made passage more difficult.

C. *Local Implementation*

1. Projects override local standards

Qualifying projects may comply with the density, height and FAR standards established by SB 79, notwithstanding contradictory local zoning standards. Cities are prohibited from adopting any zoning requirements or fees that apply solely to projects that are utilizing SB 79.[66] A city's otherwise applicable standards continue to apply to SB 79 projects, but only to extent the those standards do not prevent a project from achieving the development standards allowed by SB 79.[67] For the purposes of the Housing Accountability Act, a proposed project in compliance with the requirements of SB 79 (along with any allowable local standards) is deemed consistent with applicable standards.[68]

2. Cities have options for flexibility

SB 79 provides local agencies with potentially significant flexibility to limit the scope of required density increases, at least temporarily. A city may, but is not required to, adopt an ordinance to implement SB 79 and bring its zoning code into compliance with the law.[69] If a city adopts such an ordinance, then until one year following adoption of the city's 7th Housing Element Revision, SB 79 would not apply on the following sites within the city:[70]

- Sites within a very high fire hazard severity zone;
- Sites that are vulnerable to one foot of sea level rise;
- Sites with a historic resource designated as of January 1, 2025, on a local register;
- Sites identified by the city that permit density and FAR at 50% or more of the otherwise applicable standards under SB 79:
- Sites within a TOD zone in which at least 33% of the sites permit density and FAR at 50% or more of the otherwise applicable standards under SB 79 and those sites cumulatively allow for at least 75% of the aggregate density that would otherwise be allowed in the TOD zone pursuant to SB 79. The aggregate density thresholds are lower for sites within low resource areas.[71]

This provision gives cities signficant flexibility to delay full implementation of SB 79 until 2030 (for Los Angeles, Orange, San Diego, and Sacramento Counties) or 2032 (for Bay Area counties). Until this time, covered cities would likely be able to significantly limit the amount of density required, depending on the specific characteristics of the jurisdiction.

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[65] *See* https://cayimby.org/news-events/press-releases/yimbys-craft-labor-deal-for-sb-79.
[66] Gov. Code section 65912.157(c).
[67] *Id.*
[68] Gov. Code section 65912.157(l)
[69] Gov. Code section 65912.160(c). Adoption of an ordinance to implement SB 79 is not a project under CEQA. Gov. Code section 65912.160(c)(2).
[70] Gov. Code section 65912.161(b)(1).
[71] Gov. Code section 65912.161(b)(1)(ii),(iii).

Cities must submit their proposed ordinances to HCD for review and a determination of whether or not the ordinance is in substantial compliance with SB 79's applicable requirements.[72] If HCD determines the ordinance does not comply with SB 79, the city may amend the ordinance or make finding to explain the reasons the city believes the ordinance complies with SB 79 despite HCD's determination.[73]

SB 79 also provides two other limited paths for cities to exempt themselves from portions of SB 79's requirements.[74]

First, as part of a locally adopted SB 79 ordinance, a city may designate areas within one-half (1/2) mile of a TOD stop as exempt from SB 79 if the city makes findings supported by substantial evidence that no walking path shorter than one mile from that location to the TOD stop exists.[75] This exemption is most likely to be applicable in areas where either limited railroad track crossings or freeways, require pedestrians to walk significantly out of the way order to access a TOD station on foot.

Second, a city may adopt a "transit-oriented development alternative plan" that modifies the densities and redistributes the zoned capacity provided by SB 79.[76] Any transit-oriented development alternative plan" must comply with the following requirements:[77]

- The alternative plan must maintain the same total zoned capacity, in terms of both units and residential floor area, across all TOD zones as provided by SB 79;
- The alternative plan may not reduce the maximum allowed density for any individual site by more than fifty percent (50%), except for historic sites, those in a very high fire hazard severity zone, or vulnerable to one foot of sea level rise;
- The alternative plan may not reduce the capacity in any TOD zone, in either total units or residential floor area, by more than 50%.
- A site's maximum capacity counted toward the alternative plan may not exceed 200% of the maximum density allowed by SB 79.

A transit-oriented development alternative plan may be adopted through the housing element, a program to implement the housing element, the adoption of a specific plan, a zoning overlay, or enactment of an ordinance.[78] Any alternative plan must be reviewed and approved by HCD.

D. *Transit Agencies May Adopt Their Own Zoning Standards*

SB 79 also authorizes transit agencies to adopt transit-oriented development zoning standards for agency-owned property located in a TOD zone.[79] The law establishes various requirements for these zoning standards, including that they may establish height limits greater than those established by SB 79, but may allow densities up to 200% of the maximum otherwise permitted by SB 79.[80] Significantly, Transit-oriented development zoning standards may permit

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[72] Gov. Code section 65912.160(d)(1).
[73] Gov. Code section 65912.160(d)(5).
[74] A very limited third exemption exists in a city with at least 15 TOD stops for sites of at least 250 acres designated in a city's general plan on or before January 1, 2025 as an employment lands area. Gov. Code section 65912.160(e)(2)
[75] Gov. Code section 65912.160(e)(1).
[76] Gov. Code section 65912.161(a).
[77] Gov. Code section 65912.161(a)(1)-(3).
[78] Gov. Code section 65912.161(a).
[79] Gov. Code section 65912.158(b).
[80] See Gov. Code section 65912.158(a).

projects with as low as 50% of the total square footage dedicated to residential purposes, significantly less that a private developer is required to provide under SB 79. Adopted transit-agency adopted development standards control over the otherwise applicable local requirements.[81]

Development zoning standards adopted by a transit agency do not apply to property acquired by a transit agency through eminent domain after July 1, 2025, but nothing prevents a transit agency from negotiating the purchase of additional property to be used for development under the law.[82]

These provisions in SB 79 give local transit agencies significant power over development and land use on property they own, including for projects with significant commercial development.

III. Concurrently Utilizing Density Bonus Law, SB 79, & other Laws

The combined application of Density Bonus Law, SB 79, and other housing streamlining laws on residential development projects substantially reduce regulatory hurdles. These combinations can greatly change how cities process applications and how they make policy decisions to adopt or revise development and design standards. Cities will also need to manage expectations for if and how project appearances desired by the community could be achieved. As mentioned above, cities remain bound to their obligations under other laws such as housing element laws, No Net Loss, and CEQA notwithstanding these streamlining provisions.

A. *Utilizing Density Bonus Law With Other Housing Streamlining Laws*

A number of housing streamlining laws went into effect during recent years. These statutes limit local discretion differently and imposes various affordability and eligibility requirements, for projects to qualify for streamlined approval processes. However, these laws continue to facilitate a project's ability to take advantage of both the streamlining statute and density bonus provisions as long as eligibility requirements under both sets of laws are met. A project does not lose its Density Bonus Law benefits just because it is proposed pursuant to another streamlining statute. For instance, projects qualifying for ministerial approval under SB 35 (2017) are eligible to benefit from Density Bonus Law.[83] Likewise, projects proposed under the AB 2011 (2022) and SB 6 (2022) statutes, which allows for multi-family residential on sites within zoning districts that principally permit office, retail or parking uses, are eligible for density bonus benefits.[84] Supportive housing projects eligible for by-right approval under the provisions of AB 2162 (2018) are also eligible for density bonus benefits.[85] Similarly, the Housing Accountability Act generally provides for a housing project's ability to utilize density bonus, incentives, concessions and waivers to meet local standards. Within that statute, the Builder's Remedy provision further provides for an additional two incentives or concessions for eligible projects.[86]

B. *Using Density Bonus Law on SB 79 Project*

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[81] In 2018, the Legislature enacted AB 2923, which gave BART similar authority over property it owned.
[82] Gov. Code section 65912.158(a)(5).
[83] Gov. Code section 65913.4(a)(4)(C).
[84] Gov. Code sections 65912.113 (f)(1); 65852.24(f)(1).
[85] Gov. Code section 65655.
[86] Gov. Code section 65589.5(f)(6)(C).

SB 79 projects are eligible for density bonuses, concessions, waivers, and all other benefits of the Density Bonus Law.[87] Because of SB 79's affordability requirements, at a minimum every SB 79 project will qualify for at least a 24.5% density bonus and at least one concession, but may be entitled to significantly more if additional affordable housing is provided.

In addition, SB 79 projects that achieve a minimum density of at least 75% of the maximum density allowed for the project site will be entitled to one additional concession if the development is providing units for low-income households, two additional concessions if providing units for very low-income households, and three additional concessions if providing units for extremely low-income households.[88] Given the propensity of many developers to rely mostly on waivers in order to facilitate approval of their proposed projects, it is not clear how widely used these additional concessions will be. However, they are a potentially significant benefit for developers trying to make a project financially feasible.

SB 79 does contain one limitation on the ability of qualifying projects to utilize the Density Bonus Law. Unlike other projects, SB 79 projects may not use a density bonus waiver to increase building height above the maximum allowed by SB 79 standards.[89]

C. *SB 79 and Housing Streamlining*

SB 79 projects may qualify for streamlined ministerial approval pursuant to SB 35, including without having to satisfy all of SB 35's standard requirements.[90] Specifically, all SB 79 projects are eligible for SB 35 regardless of whether the project is in a city that is otherwise subject to SB 35 based on its housing element or RHNA compliance. Additionally, SB 79 projects must only provide 10% of units as affordable to very-low income households in rental projects or affordable to low-income households in ownership projects.

D. *Compliance with the California Environmental Quality Act (CEQA)*

Density Bonus Law does not provide an independent CEQA exemption. In fact, the statute states that it does not "alter or lessen the effect" of CEQA and any density bonus, concessions, incentives, waivers, and parking ratios must be permitted in a manner consistent therewith.[91] However, projects eligible for density bonus are likely able to utilize other CEQA exemptions for urban infill projects either under Class 32 of CEQA Guidelines section 15332 or under the exemption recently introduced by Assembly Bill 130 (2025). The ability of density bonus-eligible projects to apply incentives, concessions and waivers to override local standards means that they can be considered "consistent with applicable zoning and general plan" for the purposes of qualifying for these infill exemptions.[92]

As another example, CEQA would not apply to projects that qualify for ministerial approval under other laws, such as under SB 35 and AB 2011. In other instances where no CEQA exemption applies, the project would need to be analyzed under the appropriate environmental review level as required by CEQA and supported by evidence in the record. Practically, environmental impact reports and other analyses under CEQA frequently do not find that the

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[87] Gov. Code section 65912.157(d).

[88] Gov. Code sections 65912.157(a)(3)(D), (a)(4)(D), (a)(5)(d); 65912.157(d)(1)-(3).

[89] Gov. Code section 65912.157(d).

[90] Gov. Code section 65912.159(a). SB 35 is codified as Government Code section 65913.4. That section was later amended by SB 423.

[91] Gov. Code section 65915(m).

[92] *Wollmer v City of Berkeley* (2011) 193 Cal.App.4th 1329, 1348-49.

additional density or concessions and waivers applied towards development standards would create significant environmental impacts, even in cases where the density exceeds previously studied ranges in a tiering CEQA document.

Similarly, SB 79 does not automatically exempt projects from CEQA review or provide an independent exemption. However, SB 79 projects will often qualify for other existing CEQA exemptions. Among other exemptions, SB 79 projects may qualify for the urban infill housing statutory exemption recently enacted by AB 130. Importantly, as noted above, a project in compliance with the requirements of SB 79 (along with any allowable local standards) is deemed consistent with applicable general plan and zoning standards. With these laws combined, housing streamlining is anticipated to continue reshaping local government land use and environmental review frameworks with their effects remaining to be seen.