

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 440 (Wicks) – As Amended March 30, 2023

**SUBJECT:** Density Bonus Law: maximum allowable residential density.

**SUMMARY:** Clarifies that the base density for a development requesting a density bonus is the greatest allowable density in the zoning ordinance, specific plan, or the land use element of the general plan. Specifically, **this bill:**

- 1) Revises the definition of “maximum allowable residential density” or “base density” to mean the greatest, rather than the maximum, number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the greatest rather than the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project.
- 2) Deletes a redundant specification that, if there is an inconsistency with the density under the land use element of the general plan or specific plan, then the greater density prevails.
- 3) Makes additional technical and clarifying changes.

**EXISTING LAW:**

- 1) Requires each city and county to prepare, adopt, and administer a general plan for its jurisdiction, which must include a housing element, to shape the future growth of its community (Government Code (GC) § 65300 – 65404).
- 2) Establishes Density Bonus Law (DBL), which requires cities and counties to grant a density bonus and award other incentives or concessions to an applicant for a housing development of five or more units that agrees to set aside a minimum number of units that are affordable to households with low, very-low, or moderate income (GC § 65915).
- 3) Defines, for the purposes of DBL, “maximum allowable residential density” or “base density” to mean the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan, or, if a range of density is permitted, means the maximum number of units allowed by the specific zoning range, specific plan, or land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan or specific plan, the greater shall prevail. Density shall be determined using dwelling units per acre. However, if the applicable zoning ordinance, specific plan, or land use element of the general plan does not provide a dwelling-units-per-acre standard for density, then the local agency shall calculate the number of units by:
  - a) Estimating the realistic development capacity of the site based on the objective development standards applicable to the project, including, but not limited to, floor area ratio, site coverage, maximum building height and number of stories, building setbacks and stepbacks, public and private open space requirements, minimum percentage or square footage of any nonresidential component, and parking requirements, unless not

required for the base project. Parking requirements shall include considerations regarding number of spaces, location, design, type, and circulation. A developer may provide a base density study and the local agency shall accept it, provided that it includes all applicable objective development standards.

- b) Maintaining the same average unit size and other project details relevant to the base density study, excepting those that may be modified by waiver or concession to accommodate the bonus units, in the proposed project as in the study (GC § 65915).

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary and Author's Statement.** This bill clarifies the definition of "maximum density" by deleting redundancy in the definition. This bill also makes technical and clarifying changes to DBL.

According to the author, "Last year, AB 2334 inadvertently created confusion regarding how the base density for a density bonus project is calculated. This bill revises the definition to create more clarity. The ultimate goal of density bonus to maximize the number of affordable housing units created – this bill accomplishes that."

This bill is sponsored by the author.

- 2) **Density Bonus Projects.** DBL was originally enacted in 1979, to help address a shortage of affordable housing. Over 40 years later, the state faces the same if not worse affordable housing challenges. DBL is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for including affordable units in a development, developers are given an increase in density over a local agency's zoned density, concessions and incentives, and reductions in parking. The increase in density, and concessions and incentives are intended to financially support the inclusion of the affordable units.

All local agencies are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. Failure to adopt an ordinance does not relieve a local agency from complying with DBL. Local agencies must 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 any one of the following:

- a) Ten percent of the total units for lower income households.
- b) Five percent of the total units for very low income households.
- c) A senior citizen housing development or mobilehome park.
- d) Ten percent of the units in a common interest development for moderate income households.
- e) Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons.

- f) Twenty percent of the total units for lower income students in a student housing development, as specified.

One-hundred percent affordable developments can receive an enhanced density bonus of up to 80 percent anywhere in the state or unlimited density near transit. Otherwise, the maximum amount of density a development can receive is 50 percent in exchange for including either 15 percent very low-income units or 24 percent low-income units. Developers are not required to take the density bonus, but can access the concessions and incentives and parking reductions provided that they include the required amount of affordable housing.

- 3) **Maximum Density or Base Density.** A developer calculating a density bonus must determine the amount of units allowed on the site or the “base density.” The density can be found in the zoning ordinance, a specific plan, or the land use element of the general plan. In some cases, the density in these documents maybe different because the zoning ordinance has not been updated to reflect the density in the general plan. In some cases, there may be a range of densities allowed in one of the potential planning documents as well. DBL requires that the statute be interpreted liberally in favor of producing the maximum number of total housing units.

Last year, AB 2334 (Wicks), Chapter 653, made various changes to DBL, including revising the definition of “maximum density” and “base density” to make clear that the density for a development seeking a density bonus is the maximum number of units allowed under the zoning ordinance, specific plan, or land use element of the general plan. However, the bill continued to state that, in the more specific case of an inconsistency between the land use element of the general plan and a specific plan, the greater density would prevail. This sentence has led to confusion and caused some to question the application of the broader provision. Some have argued that where there is an inconsistency or a range of densities allowed in the zoning ordinance, land use element of the general plan, or a specific plan, the base density is the greatest allowable density.

- 4) **Previous Legislation.** AB 2334 (Wicks), Chapter 653, Statutes of 2022, made changes to the definition of “maximum density” and “base density” and created an enhanced density bonus for 100 percent affordable housing developments in urbanized areas with below average levels of vehicle miles travelled.
- 5) **Arguments in Support.** According to the California Housing Consortium, “AB 2334 (Wicks, 2022) strengthened [DBL] provisions that allow developers to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The bill made technical changes and cleanup to ensure that the law is producing the maximum number of total housing units.

“Since its implementation, there has been some confusion about the definition of ‘maximum allowable residential density.’ AB 440 clarifies that when there is an inconsistency between the zoning ordinance, specific plan, or land use element of the general plan, the greatest number shall prevail.”

- 6) **Arguments in Opposition.** None on file.

- 7) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 7-0 vote on April 12, 2023.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Housing Consortium  
East Bay Yimby  
Grow the Richmond  
How to ADU  
Mountain View Yimby  
Napa-solano for Everyone  
New Livable California DbA Livable California  
Northern Neighbors  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
San Francisco Yimby  
San Luis Obispo Yimby  
Santa Cruz Yimby  
Santa Rosa Yimby  
South Bay Yimby  
Southside Forward  
Ventura County Yimby  
Yimby Action

**Opposition**

None on file.

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