

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2334 (Wicks) – As Amended April 18, 2022

**SUBJECT:** Density Bonus Law: affordability: incentives or concessions in very low vehicle travel areas: parking standards: definitions.

**SUMMARY:** Allows a housing development project to receive added height and unlimited density if the project is located in a very low vehicle travel area, at least 80 percent of the units are restricted to lower income households, and no more than 20 percent are for moderate-income households. Specifically, **this bill:**

- 1) Defines “very low vehicle travel area” to mean an urbanized area where the existing residential development generates vehicle miles traveled (VMT) per capita that is below 85 percent of either regional or city VMT per capita, as specified.
- 2) Expands the following provisions, which currently apply to housing developments within one-half mile of a major transit stop that restrict 100 percent of units to either low income or moderate income households, as specified, to developments that are located in an very low vehicle travel area:
  - a) A height increase of up to three additional stories, or 33 feet.
  - b) No imposition of maximum controls on density by the local government.
- 3) Requires the rents for specified units in housing development projects that receive a density bonus to be consistent with the maximum rent levels for lower income households as determined by the California Tax Credit Allocation Committee.
- 4) Provides that, as part of an equity sharing agreement, a local government may defer to the recapture provisions of a public funding source.
- 5) Adds to the list of items considered a development standard “a minimum lot area per unit requirement.”
- 6) Revises the definition of “maximum allowable residential density” to require density to be determined using the dwelling units per acre adopted by the local agency via a zoning ordinance, a specific plan or the land use element of the general plan. If a local agency does not adopt dwelling units per acre standard, the maximum allowable density shall be calculated using the floor area ratio, lot size or other metric, adopted by the local agency via a zoning ordinance, a specific plan, or the land use element of the general plan.
- 7) Revises the procedure for handling inconsistencies between allowable density between zoning ordinances and general plans to include specific plans, and to require the one with greater density to prevail.

- 8) Changes the criteria that a specified developments must meet in order to receive an elimination of parking minimums as follows:
  - a) Replaces the existing requirement that a development must consist solely of rental units that are affordable to lower income families, as defined; and requires instead, that one hundred percent of all units in a development, including total units and density bonus units, exclusive of a manager's unit or units, are for lower income households, as defined, except that up to 20 percent of the units in the development.
  - b) Lowers the age requirement that allows a development to qualify for the parking reduction to developments that are limited to individuals from 62 to 55 years or older.
- 9) Makes technical and clarifying changes to Density Bonus Law (DBL).
- 10) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

**EXISTING LAW:**

- 1) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:
  - a) Ten percent of the total units of a housing development for low-income households.
  - b) Five percent of the total units of a housing development for very low-income households.
  - c) A senior citizen housing development or age-restricted mobilehome park.
  - d) Ten percent of the units in a common interest development (CID) for moderate-income households provided the units are available for public purchase.
  - e) Ten percent of the total units 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.
- 2) Provides that, upon the developer's request, the local government may not require parking standards greater than the following:
  - a) Zero to one bedrooms: one onsite parking space per unit.
  - b) Two to three bedrooms: one and one-half onsite parking spaces per unit.

- c) Four or more bedrooms: two and one-half parking spaces per unit.
- 3) Specifies that, if a rental development contains at least 80 percent of units for lower income residents and no more than 20 percent of units for moderate income residents, then, upon the request of a developer, a local government must eliminate parking minimums if the development is any of the following:
- a) Located within one-half mile of a “major transit stop” to which there is unobstructed access.
  - b) For-rent housing development for individuals who are 62 years of age or older with paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
  - c) A special needs rental housing development for lower income households with paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.
  - d) A supportive housing development of rental units for lower income households.
- 4) Specifies that applicants for a density bonus can receive the following number of incentives or concessions:
- a) One incentives or concessions for projects that include:
    - i) At least 10 percent of the total units for lower income households.
    - ii) At least five percent for very low income households.
    - iii) At least 10 percent for moderate income persons and families in a development in which units are for sale.
    - iv) At least 20 percent of the units for lower income students in a student housing development.
  - b) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for moderate income persons and families in a development in which units are for sale.
  - c) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for moderate income persons and families in common interest developments.
  - d) Four incentives or concessions for a project with at least 80 percent of the total units for lower income households and no more than 20 percent of the total units for moderate income households.

- 5) Permits an applicant to submit to a local government a proposal for the specific incentives or concessions that the applicant requests, as specified, and allows the applicant to request a meeting with the local government.
- 6) Defines “concession or incentive” as:
  - a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable and actual cost reductions, to provide for affordable housing costs or for rents for the targeted units.
  - b) Approval of specified compatible mixed-use zoning in conjunction with the housing project that will reduce the cost of development.
  - c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing.
- 7) Provides that, for housing developments with at least 80 percent of units for lower income households and no more than 20 percent of the units for moderate income households, rents are as follows:
  - a) For at least 20 percent of the units, the rents must be set at affordable rent as defined in Section 50053 of the Health and Safety Code.
  - b) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.
- 8) Specifies that, for designated units developed using density bonus law, the local government must enforce an equity sharing agreement that meets specified criteria unless it is in conflict with the requirements of another public funding source or law.
- 9) Defines “development standard” to include a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.
- 10) Provides that “maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and 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, the general plan density prevails.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Author’s Statement.** According to the author, “We have seen firsthand the essential role affordable housing has played during the pandemic, providing shelter, support, and community to some of our state’s most vulnerable groups—including seniors and veterans, teachers and firefighters, disabled persons and the far too many working families that cannot afford the rising cost of market rents. With a gap of 1.2 million homes affordable to low income households and roughly 150,000 people experiencing homelessness every day, the state must continue to strengthen policies that increase the number of affordable units being constructed.

“AB 2334 promotes housing construction by expanding California’s Density Bonus Law creating opportunities for 100% affordable housing developments to earn an enhanced density bonus near areas with low vehicle miles traveled. This bill will address the state’s affordability crisis and furthers environmental sustainability goals.”

- 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. Density bonus 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 city’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 governments 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 government from complying with state DBL. Local governments 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 density bonus 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) **The Housing-Climate Nexus.** California is facing dual crises: a rapidly warming climate due to greenhouse gas emissions (GHG) and a housing crisis stemming from an undersupply of housing which the Department of Housing and Community Development (HCD) recently attributed to “decades of underproduction underscored by exclusionary policies” in its 2022 update to the Statewide Housing Plan. Housing affordability remains a major challenge for many of California’s most economically-vulnerable households and, according to data from the 2019 American Communities Survey, over half of the state’s renters are considered rent-burdened, which is defined as paying more than 30 percent of their income towards rent.

At the same time, in order to meet the state’s GHG reduction goals it is crucial that the state rapidly reduce emissions across a variety of sectors, including housing and transportation. In terms of transportation, lowering VMT remains an important objective. The State’s 2017 Climate Change Scoping Plan update highlights infill development as a strategy for longer-term VMT reductions.

- 4) **Incentivizing Affordable Infill Housing.** California has taken a number of steps to promote more sustainable urban infill housing, including through the use of DBL. AB 1763 (Chiu), Chapter 666, Statutes of 2019, allowed for an enhanced density bonus for certain affordable housing projects located within one-half mile of a major transit stop. AB 1763 gives affordable housing projects the ability to receive unlimited density and a height increase of 33 feet or three stories. To receive this enhanced density bonus, 100 percent of the project must be deed restricted, with at least 80 percent of the units dedicated for lower-income households and up to 20 percent for moderate-income individuals and families.

While AB 1763 made it easier to build dense, affordable housing near transit, many parts of the state lack the level of public transportation service necessary to qualify for the enhanced density bonus the legislation allowed. However, within these areas of the state it is still important to promote housing in urbanized areas that allow residents to reduce their reliance on vehicle travel. In the coming months the Governor’s Office of Planning and Research (OPR) will release maps that indicate low VMT areas within certain regions. Specifically, the maps will include regional VMT calculations within Metropolitan Planning Organizations (MPOs).

- 5) **Below 85 Percent.** This bill allows developments that are located in areas where the VMT is below 85 percent of the applicable city or regional average VMT to enjoy certain development benefits. As noted above OPR is in the process of mapping VMT areas across the state. Additionally several MPOS already mapped VMT by census tract, or adopted hexagons to identify VMT by specified zones within their region.

The legislation is currently limited to urbanized areas; however even within urbanized areas, it is unclear how many zones will meet the VMT standard specified in this legislation as residential VMT averages can change over time. The Sacramento Area Council of

Governments (SACOG) mapped residential VMT hexagons across the region; the hexagons mapped by SACOG closely mirror census tracts. The SACOG data allows users to compare each hexagon to the regional average VMT and the average VMT for the applicable city or county (e.g. El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba).

<https://sacog.maps.arcgis.com/apps/webappviewer/index.html?id=0eac172e44514776b2f30e4324652f88&extent=-13567338.6225%2C4599309.7898%2C-13330078.0867%2C4789485.1162%2C102100>

The hexagons that meet the VMT criteria in SACOG appear to largely track denser urban areas in the region. For example, areas in heavily urbanized downtown Sacramento experience an average residential VMT of 12 compared to the regional average residential VMT of 20.82. In order for a development in SACOG to be eligible for the benefits offered by this bill, the development must be located in an urbanized area with an average of less than 17.7 VMT (85% of regional VMT).

The Metropolitan Transportation Commission recently simulated average residential VMT across the San Francisco Bay Area. Within the Bay Area, numerous tracts appear to meet the criteria specified in this bill. These areas largely track major public transit corridors such as the Bay Area Rapid Transit (BART) system, and CalTrain along the peninsula. To the extent this bill expands the areas where density bonus projects are eligible for enhanced incentives, the expansion may be modest.

- 6) **Bill Summary.** This bill proposes to expand AB 1763's enhanced density bonus provisions to cover very low vehicle travel areas in urbanized areas where existing residential development generates VMT that is below 85 percent of either the region or city's per capita VMT.

This bill is sponsored by the California Housing Consortium.

- 7) **Policy Considerations.** The Committee and the author may wish to consider the following:

**Assessing VMT Locally.** The bill requires local agencies to provide specified benefits to certain density bonus projects located in urbanized areas that qualify as very low vehicle travel areas compared to either the city or region. DBL requires local agencies to *adopt an ordinance that specifies how compliance with DBL will be implemented*. Should this bill become law, local agencies will need to update their ordinance to specify how VMT areas are identified.

Whether VMT is measured against city or regional VMT averages could significantly affect the scope of this legislation. For example, SACOG calculates that the average residential VMT for the city of Placerville is 17.9; the regional average VMT for SACOG is 20.82. There are several areas in Placerville that qualify as very low VMT compared to the region, but only a handful of areas in Placerville qualify as very low VMT compared to the city. It is not clear if a city with an average VMT lower than the regional average is required to provide incentives to projects located in areas that qualify as low VMT compared to the city or the regional average, or if a city can limit eligibility to projects that qualify as low VMT compared to the city average.

The author may wish to clarify whether the requirement for local agencies to adopt an ordinance specifying how compliance with DBL will be implemented authorizes the local agency to select which residential VMT average to weigh project areas against.

- 8) **Technical Amendment.** The Committee may wish to consider the following technical amendment:

**Urbanized Areas.** The bill uses the term “urbanized areas” in the definition of “very low vehicle travel area.” Urbanized area is typically understood to mean an urbanized area as defined by the United States Census Bureau. In legislation citing “urbanized areas” the term is typically qualified with the term “as designated by the United States Census Bureau.” To align the bill with other statutes related to housing development, the Committee may wish to amend the definition of “very low vehicle travel area” as follows:

“Very low vehicle travel area” means an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita. For purposes of this paragraph, “area” may include a travel analysis zone, hexagon, or grid. For the purposes of determining “regional vehicle miles traveled per capita” pursuant to this paragraph, a “region” is the entirety of incorporated and unincorporated areas governed by a multicounty or single-county metropolitan planning organization, or the entirety of the incorporated and unincorporated areas of an individual county that is not part of a metropolitan planning organization.

- 9) **Arguments in Support.** The California Housing Consortium writes in support, “AB 2334 addresses the housing affordability crisis and furthers environmental sustainability goals by incentivizing infill development and densification of urbanizing communities that may not yet have high quality transit, but offer convenient access to jobs, retail, and services, allowing residents to drive less to reach their daily destinations. Encouraging higher density development in low-VMT areas will increase production of critical affordable housing while supporting the reduction of greenhouse gas emissions and reducing the exposure of low-income Californians to the impacts of climate change.”
- 10) **Arguments in Opposition.** The City of Lafayette writes in opposition, “Granting a developer an unlimited density bonus and three additional stories is too extreme in many communities – many of which are not proximate to existing transit corridors to improve the housing-climate nexus that the bill seeks to address by connecting housing to transit.”
- 11) **Previous Legislation.** AB 1763 (Chiu), Chapter 666, Statutes of 2019 provided an enhanced density bonus to require a local government to award a developer additional density, concessions and incentives, and height increases if at least 80 percent of the units in a development are restricted to lower income households.

SB 743 (Steinberg), Chapter 386, Statutes of 2013 required OPR to propose revisions to the California Environmental Quality Act (CEQA) Guidelines to establish new criteria for evaluating the significance of transportation project impacts.

SB 375 (Steinberg), Chapter 728, Statutes of 2008 required metropolitan planning MPOs to create sustainable communities strategies (SCS) as part of the state’s GHG reduction efforts.



12) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee, where it passed on a 6-1 vote on March 23, 2022.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Housing Consortium [SPONSOR]  
Affirmed Housing  
All Home  
Amcal  
American Planning Association, California Chapter  
AMG & Associates, LLC  
Bridge Housing Corporation  
Brilliant Corners  
California Apartment Association  
California Association of Local Housing Finance Agencies  
California Council for Affordable Housing  
California Housing Partnership Corporation  
California Rural Legal Assistance Foundation  
California YIMBY  
Central City Association  
Circulate San Diego  
Civicwell (formally the Local Government Commission)  
Community Corporation of Santa Monica  
Community Housingworks  
CRP Affordable Housing and Community Development  
EAH Housing  
Eden Housing  
First Community Housing  
Housing California  
Integrity Housing  
John Stewart Co  
Jonathan Rose Companies  
LA Family Housing  
Linc Housing  
Mercy Housing  
Merritt Community Capital Corporation  
Midpen Housing Corporation  
Non-profit Housing Association of Northern California (NPH)  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
South Pasadena Residents for Responsible Growth  
Southern California Association of Non-profit Housing (SCANPH)  
Sv@home Action Fund  
Turner Center for Housing Innovation At the University of California, Berkeley  
The Pacific Companies  
The Two Hundred  
Thomas Safran & Associates

Wakeland Housing and Development Corporation  
Western Center on Law & Poverty

**Oppose Unless Amended**

State Building and Construction Trades Council of California

**Opposition**

Catalysts for Local Control  
City of Lafayette  
Livable California

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