
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Robert M. Hertzberg, Chair

2015 - 2016 Regular

Bill No: AB 744
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Tax Levy: No
Fiscal: Yes

PLANNING AND ZONING: DENSITY BONUSES

Places a cap on the parking ratios that local governments may impose on some affordable housing developments.

Background and Existing Law

Local Planning. Cities and counties must adopt general plans with seven specified elements, including a land use element that contains standards for population density and building profiles. Most local land use decisions must be consistent with these general plans. All cities and counties' decisions on subdivisions and public works projects must be consistent with their general plans. General law cities and counties' zoning ordinances and conditional use permits must be consistent with their general plans. However, except for the City of Los Angeles's zoning ordinance, charter cities' zoning ordinances and conditional use permits don't have to be consistent with their general plans.

Local ordinances can set a variety of rules intended to shape developments, including setting maximum densities for housing units or minimum numbers of required parking spaces. These parking space requirements are often based on a "parking ratio" that requires builders to include a certain number of parking spaces per unit, depending on the size of the unit. High parking ratios can increase the cost of housing because constructing off-street parking can be expensive. For example, estimates of the average cost of constructing parking spaces range from \$15,000 to \$34,000 per space.

Density Bonus Law. Given California's high land and construction costs, it can be difficult for developers to provide housing units that are affordable to low- and moderate-income households. In order to improve the financial viability of developments that provide housing at a cost below the market rate, the state enacted the Density Bonus Law, which allows a development that meets certain criteria to include more total units in a project than would otherwise be allowed by local zoning. To be eligible for a density bonus, a development must do any of the following:

- Reserve at least 10% of the units for lower income households;
- Reserve at least 5% of the units for very low income households;
- Be either a senior citizen housing development or a mobile home park for older persons, as defined in the Civil Code; **or**
- Reserve at least 10% of the units in a common interest development for people of moderate income, as long as all units are available for purchase by the general public.

These affordable housing units must remain affordable for at least 55 years. Developers that meet the requirements in density bonus law receive several other benefits in addition to higher

allowable densities, including “concessions” such as regulatory exemptions that result in cost reductions and waivers of development standards that would physically prevent the development from being constructed. Density bonus law also caps the parking ratio that a local government may require at:

- 1 parking space per unit with zero or one bedroom;
- 2 parking spaces per unit with two or three bedrooms;
- 2.5 parking spaces per unit with four or more bedrooms.

Developments that include higher percentages of low or very low income households get higher allowable housing densities and other benefits, up to maximum percentages of 20% low income or 11% very low income. For example, a housing project with only 5% of very low income housing is entitled to a 20% increase in density, one concession, unlimited waivers from development standards, and reduced parking standards for the entire project. A housing project with 11% very low income units receives a 35% increase in density, two concessions, and the same access to waivers and reduced parking standards.

State Transit Policies. A number of state policies encourage new developments near public transit in order to reduce vehicle miles traveled. The Planning and Zoning Law declares three state planning priorities, including encouraging efficient development patterns. That priority can be furthered by new development that uses land efficiently, is adjacent to developed areas, is planned for new growth, is served by adequate transportation, and minimizes taxpayers’ continuing costs. In addition, California has a goal of reducing greenhouse gas emissions (AB 32, Nuñez & Pavley, 2006). Reducing vehicle emissions involves multiple strategies, including clean technology as well as reducing the amount of vehicle miles traveled. Among the ways to reduce vehicle miles is better coordination of transportation and land use plans and increasing the density in existing areas and new development projects. To those ends, Senate Bill 375 (Steinberg, 2008) linked transportation planning and land use planning by state, regional, and local agencies by providing metropolitan planning organizations and their constituent cities and counties with, among other things, incentives to promote development within one-half mile of a “major transit stop.” SB 375 defines a major transit stop to mean a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

Some organizations want to further encourage affordable housing development near transit by reducing the number of parking spaces that are required for certain new developments.

Proposed Law

Assembly Bill 744 adds several provisions to the density bonus law that reduce the parking ratios that cities and counties may impose on new developments that meet certain criteria. Specifically, AB 744:

- Prohibits local governments from requiring parking ratios greater than 0.5 spaces per unit for a development that includes, at least 20% low income or 11% very low income housing units and is within one-half mile of a major transit stop, as defined by state law.
- Prohibits local governments from requiring parking ratios greater than 0.5 spaces per unit for a development that is entirely composed of low or very low income rental housing units and is within ½ mile of a major transit stop.

- Prohibits local governments from requiring parking ratios greater than 0.5 spaces per unit for a development that:
 - Is a senior citizen development renting to individuals 62 years of age or older;
 - Is entirely composed of low or very low income rental housing units, **and**;
 - Has paratransit or is located within ½ mile of a bus line that runs at least eight times per day.
- Prohibits local governments from requiring parking ratios greater than 0.3 spaces per unit for a development that:
 - Is a special needs housing development, defined as a development for the benefit of persons with mental health needs, physical or developmental disabilities, or those at risk of homelessness;
 - Is entirely composed of low or very low income rental housing units, **and**;
 - Has paratransit or is located within ½ mile of a bus line that runs at least eight times per day.

These ratios include parking set aside for guests and handicapped spaces. The affordable housing developments near transit that qualify under AB 744 must provide unobstructed access to the transit stop that they are near, meaning that a resident must be able to access the stop without encountering natural or constructed impediments.

AB 744 also allows a local government to impose a parking ratio up to the ratios allowed in current law, for developments that receive density bonuses if the local government makes findings that a higher parking ratio is needed, based on findings in any parking study conducted for the area by an independent consultant in the past seven years that demonstrates the need.

AB 744 also allows developers that receive density bonuses to use a concession to request changes to parking restrictions beyond those established by the bill. It also states that it does not prevent a local government from reducing or eliminating parking requirements, for any development in any location and includes findings and declarations identifying the need for its provisions.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. In some cases, cities and counties apply minimum parking standards to affordable housing developments that do not reflect the demand from tenants for parking. These projects may be close to transit stations or home to seniors or individuals with special needs who drive less frequently and have fewer vehicles. Parking spaces, which sometimes go unused, can significantly increase the cost of construction. This bill promotes affordable housing by enabling developers to invest in building more affordable dwelling units instead of spending funds on parking spaces that may go unused. AB 744 also encourages building of urban infill, transit-oriented development, and senior and special needs housing by providing benefits to those categories of development. It also ensures the mobility of residents of these developments by only granting a benefit to developments in locations that provide residents with access to alternative forms of transportation, such as transit and paratransit. Finally, AB 744 provides

flexibility to locals because it allows cities to establish parking standards suitable for their specific circumstances upon demonstration that the greater parking requirements are necessary.

2. Home rule. Local governments must balance competing priorities when determining the amount of parking that is required for new developments. Cities must look at the broader impacts on the community that result from inadequate parking for new development. Residents and the guests or service providers of those residents who are unable to find a place to park within their development will look elsewhere, such as city streets or parking lots for businesses. This spillover can hurt nearby businesses, by taking parking spaces that would otherwise be used by customers and can engender community resistance to these types of projects as nearby residents become concerned about the projects' impacts. That's why we elect local leaders to make these decisions.

3. Sure, but will it work? For market-rate housing, it makes sense to let the market determine how much parking a housing development needs. Market-rate housing developers have an incentive to identify the amount of parking that potential residents demand because residents can pay similar prices elsewhere if their demand isn't met. However, with affordable housing, the market may not function as well. Buyers and renters seeking affordable housing have fewer options. Housing developers may choose to build the minimum amount of parking allowable under law in order to maximize revenue, and low-income residents may live there anyway, regardless of whether the available transit and parking options meet their needs. For example, transit options may not be adequate for residents who travel to their jobs outside peak commute periods. The Committee may wish to consider amending AB 744 to ensure that residents of developments with these lower parking ratios have easy access to necessary transportation, by reducing the distance to transit for a project to be eligible for the lower parking minimums or adjusting the requirements of what constitutes a major transit stop for the purposes of the bill.

4. Mandate. The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. According to the Legislative Counsel's Office, AB 744 creates a new state-mandated local program because it increases the duties of local officials who must award density bonuses. AB 744 says that if the Commission on State Mandates determines that it creates a state-mandated local program, the state must reimburse local agencies by following the existing statutory process for mandate claims.

5. Charter cities. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. AB 744 includes a legislative finding and declaration that the need to address infill development and excessive parking requirements is a matter of statewide concern, so its requirements apply to all cities and counties in California, including charter cities and counties.

6. Incoming! The Senate Transportation and Housing Committee approved AB 744 by a vote of 7-4 on July 7, 2015.

Assembly Actions

Assembly Housing and Community Development Committee:	6-1
Assembly Local Government Committee:	7-2
Assembly Appropriations Committee:	12-4
Assembly Floor:	52-24

Support and Opposition (7/9/15)

Support: American Planning Association—California Chapter; California Association of Local Housing Finance Agencies; California Council for Affordable Housing; California Apartment Association; California Association of Local Housing Finance Agencies; California Economic Summit; California Housing Consortium; Circulate San Diego; Council of Infill Builders; Domus Development; Donald C. Shoup, Professor of Urban Planning; Housing Authority of the City of Alameda; LifeSTEPS; LINC Housing; Local Government Commission; Natural Resources Defense Council; Non-Profit Housing Association of Northern California; San Francisco Mayor Edwin Lee; Brian Stanke; Richard Hedges; Daniel Gomez; Jason Burstis; William Chapin; Tanya Narath; Jean Long; Gerard Sorensen; Jennifer West;

Opposition: City of Camarillo; City of Encinitas; City of Lakewood; County of Los Angeles; League of California Cities.

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