



UCLA AFFORDABLE HOUSING POLICY BRIEF

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The UCLA Ziman Center for Real Estate presents the next in a series of Affordable Housing Policy Briefs. This April 2018 UCLA Brief is a product of the recent [Affordable Housing Symposium: The Supply Crisis in California](#), hosted by [Fannie Mae](#) and the UCLA Ziman Center for Real Estate and co-sponsored by the Building Industry Association Los Angeles/Ventura Chapter ([BIALAV](#)), California Association of Realtors ([CAR](#)), California Bankers Association ([CBA](#)), California Housing Finance Agency ([CalHFA](#)) and California MBA ([CMBA](#)).

A full video documentation of the symposium is available at: <http://bit.ly/fannie-mae-ucla-ziman-symposium>.

In this Policy Brief, [David P. Waite](#), Partner, Cox, Castle & Nicholson LLP, and co-author [Julia E. Stein](#), Senior Counsel, Cox, Castle & Nicholson LLP, summarize current legislation intended to alleviate California's housing crisis through development of more affordable and market-rate housing.

Cracking the Housing Code Will Transit, Density and Land-Use Controls Help Solve California's Affordability Crisis?

By [David P. Waite](#) and [Julia E. Stein](#)

The past year saw multiple efforts by lawmakers at the state and local levels to address the dire need for new, and affordable, housing throughout California. Two of those efforts present interesting opportunities for infill developers in Los Angeles: the City of Los Angeles' Transit Oriented Communities (TOC) Affordable Housing Incentives Program, which stemmed from the voters' passage of Measure JJJ in November 2016, and the statewide Senate Bill (SB) 35, designed to increase the amount of available affordable housing by creating a streamlined, ministerial process for planning approval of urban infill multi-family projects in jurisdictions that have not met their state-mandated Regional Housing Needs Allocation (RHNA).

"Receiving enormous attention is AB 827, which would "upzone" areas well-served by transit to allow for the development of more housing."

THE TOC PROGRAM

The TOC Program creates a new incentives system for residential projects located within a half-mile radius of a major transit stop—a rail station or the intersection of at least two bus routes with frequent service during peak commute times—which also meet certain affordable housing requirements. Housing developments are required to provide a set percentage of Extremely Low Income, Very Low Income, and Lower Income units based on their proximity to particular types of transit.

The Program tiers incentives based on the size of a project’s affordable component and its proximity to four specific kinds of transit stops, allowing for up to an 80% increase in density or up to a 55% increase in floor area ratio (FAR) depending on the individual project’s location and specifications. It also allows for a significant parking reduction for both market-rate and affordable units. A project’s specific tier is determined based on the shortest distance between its lot and a qualified transit stop, as well as the type of transit stop. In addition to base density, FAR, and parking incentives, which any eligible project may receive in accordance with its designated tier, projects may be granted up to three additional incentives, including reductions in yard/setback requirements, reductions in lot width, increases in lot coverage, and increases in project height, in return for meeting specific affordability requirements.

As an illustration of the potential benefits of the TOC Program, consider the following two scenarios in Tier 4 (for projects proximate to a metro station that is also served by a rapid bus line):

	Original Project	Using TOC Program Incentives
Residential Only	75 base units 3:1 FAR on a 30,000 sf lot with 25,000 sf buildable area, translating to 90,000 sf floor area	135 units (80% density bonus) 4.25:1 FAR, translating to 106,250 sf floor area No parking required
Mixed-Use in Commercial Zone	150 base units 1.5:1 FAR on a 60,000 sf lot, translating to 90,000 sf of floor area	270 units (80% density bonus) 4.25:1 FAR, translating to 255,000 sf of floor area No parking required for residential component; 40% reduction in non-residential parking

While there are clear benefits to participating in the TOC Program, it is not a silver bullet for developers looking to completely bypass the complicated issues that can arise through the discretionary approvals process. Many development sites close to transit are still zoned for industrial uses, requiring a zone change before a mixed-use or residential project is able to apply for TOC incentives. The TOC Program does not allow for streamlining to avoid the discretionary aspects of that process, and the zone change itself would trigger prevailing wage and labor requirements established by a different section of Measure JJJ.

Furthermore, while the application of base TOC incentives is ministerial, additional incentives are subject to discretionary review, and the TOC Program does not eliminate site plan review or other discretionary approvals processes. As a result, discretionary and CEQA review may still delay the project.

SB 35

By contrast, SB 35 does not offer project incentives, but does allow for ministerial planning review under certain circumstances. In Los Angeles, which has failed to approve enough housing projects to meet its RHNA for below-moderate income housing, 50 percent of a project’s residential component must be dedicated for affordable housing and prevailing wage and labor standards must be met to take advantage of SB 35’s streamlining provisions.

In addition, a project must be consistent with “objective zoning and design review standards” set by the local land-use authority—meaning that projects requiring a zone change are not eligible for SB 35 streamlining. Projects taking advantage of the TOC Program’s ministerial base incentives and only needing discretionary approval from the City for site-plan review (e.g. not requiring a zone change or other discretionary approval) could utilize SB 35 to bypass discretionary review by meeting the affordable and prevailing-wage requirements. However, even the Program’s discretionary additional incentives could potentially send a project outside of SB 35’s streamlining power.

Assuming that a project meets SB 35’s standards, the local agency may still perform design plan review or other public oversight functions, but those functions must be complete within 90 days for a project of 150 or fewer housing units and within 180 days for a project of more than 150 housing units, and cannot inhibit the ministerial nature of the project approval in any way.

SB 375

Beyond SB 35, some transit-oriented projects may be able to bypass CEQA review entirely through SB 375, which makes “sustainable communities projects” in transit-priority areas exempt from CEQA review. However, large projects of over 200 residential units or on sites larger than 8 acres are not eligible for an SB 375 CEQA exemption.

SB 827 (Pending)

California State Senator Scott Wiener continued the Legislature’s efforts to address the State’s housing crisis with the introduction of a bill on January 3, 2018 that is getting enormous attention. Amended on March 1, 2018, the bill would “upzone” areas well-served by transit to allow for the development of more housing. This proposed legislation comes on the heels of the enactment of the 15 housing bills in the fall of 2017 and demonstrates Sacramento’s recognition that the State’s housing woes are unlikely to be fixed at the local level.

Now working its way through the Legislature, the new bill, known as SB 827, would authorize the developer of a “transit-rich housing project” to receive a “transit-rich housing bonus.” The bill defines a “transit-rich housing project” as a residential development project located within one-half mile of a “major transit stop” or one-quarter mile of a stop on a “high-quality transit corridor.”

The bill defines “high-quality transit corridor” as a corridor with fixed route bus service that has service intervals of 15 minutes or less during peak commute hours. The originally introduced version of the bill defined “major transit stop” using the definition of the term from the California Environmental Quality Act (CEQA) – “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.”

The March 1, 2018, amendment does not include a definition of “major transit stop,” which may be an oversight that will be addressed in a future amendment. Assuming that Senator Wiener intends for the term “major transit stop” to have the same definition as in CEQA (or a similar definition), then the effect of the legislation would be “upzone” significant portions of cities and counties that are well-served by transit for residential development. In order to qualify as a transit-rich housing project, the underlying zoning district must principally or conditionally permit housing.

For a qualifying “transit-rich housing project,” the “bonus” that the bill would grant is an exemption from local development standards (including those set forth in Charters, General Plans, Specific Plans, Zoning Ordinances or other local laws or regulations) regarding the following:

- maximum controls on residential density;
- maximum controls on FAR (that are lower than the minimums specified in SB 827);
- minimum automobile parking requirements;
- maximum height limits (that are lower than the minimums specified in SB 827); and
- zoning or design controls that limit additions onto existing structures if the additions comply with the minimum height limits and FAR limits specified in SB 827

With respect to height limits, if a qualifying project is within a one-quarter mile of a major transit stop or a stop on a high-quality transit corridor the project would be exempt from any height limit that is less than 85 feet. (An exception to this provision states that if the project is on a street less than 70 feet wide, the project would be exempt from any height limit that is less than 55 feet.)

If a qualifying project is between one-half mile and one-quarter mile of a major transit stop, the project would be exempt from any local height limit less than 55 feet. (Another exemption: If the project is on a street less than 70 feet wide, the maximum height may not be less than 45 feet.) According to Senator Wiener, developers could build below these height limits, and local governments could increase height limits above the minimums set forth in SB 827, but local governments could not impose height limits below those set forth in the bill.

As a result of the March 1, 2018 amendment, in order to apply for a transit-rich housing project, the developer must satisfy the following requirements:

- The project is subject to local demolition controls, and any existing rent-controlled dwelling units cannot be demolished as part of the project unless the local government has passed a review process for such demolitions.
- The project complies with local inclusionary housing requirements.
- The developer submits a relocation assistance and benefits plan.
- The project complies with local, objective zoning standards (except for those SB 827 preempts), provided that those standards do not result in a FAR that is less than 2.5 for lots subject to a height limit of 45 feet, 3.25 for lots subject to a height limit of 55 feet, and 4.5 for lots subject to a height limit of 85 feet.
- The project complies with local unit mix requirements, provided that those requirements do not have the effect of requiring more than 40 percent of all units to have two bedrooms or more.

In response to criticism that the originally introduced bill did not adequately address potential displacement of existing residents, the March 1, 2018 amended version of the bill, includes extensive (and burdensome) tenant relocation and benefits requirements, including but not limited to providing displaced tenants with a right of first refusal for a comparable unit in the transit-rich housing project and paying displaced persons for moving and related expenses and relocation benefits.

SB 827 states that the developer of a transit-rich housing project may also apply for a density bonus, and that the developer may apply for streamlined, ministerial approval pursuant to SB 35. (SB 35 is Senator Wiener's bill from the 2017 legislative session that created a streamlined, ministerial approval process for qualifying residential infill development projects in jurisdictions that failed to produce sufficient housing to satisfy their Regional Housing Needs Assessment (RHNA) requirements.)

Finally, the bill states it addresses a matter of statewide concern and applies equally to all cities and counties, including a charter city. The purpose of this statement is to make clear the Legislature's intent to preempt conflicting local zoning and land-use controls, which have been traditionally viewed as a matter of local concern (subject to limited exceptions).

Because the bill would significantly limit cities' and counties' ability to control development in their jurisdictions and to enact and enforce development standards, there is opposition from cities and counties, environmental groups, and neighborhood organizations.

Los Angeles City Councilman David Ryu introduced a resolution to oppose SB 827, and Los Angeles City Councilman Paul Koretz has called the legislation "the worst idea I've ever heard." Similarly, Berkeley Mayor Jesse Arreguin has called SB 827 "a declaration of war against our neighborhoods." Thus, to the extent that the bill moves forward, it will likely be significantly modified.

Furthermore, unlike SB 35, SB 827 does not include streamlining provisions. Therefore, the developer of a transit-rich housing project would most likely need to undergo a discretionary approval process and review under CEQA (unless the project also qualifies for streamlining under SB 35). In any event, SB 827 shows continued interest amount certain State Senators and Assembly members in addressing the State's housing crisis, and there may be another package of housing bills arriving on the Governor's desk in 2018.

Opportunities Abound?

The ability to take advantage of these programs will depend, in large part, on the location of the project site and the type of project under consideration. Sites close to transit that are already zoned for residential use are ideally suited for the TOC Program. However, projects requiring a zone change will become subject to Measure JJJ prevailing wage requirements and cannot take advantage of SB 35 streamlining. For many transit-oriented projects that require discretionary approvals beyond site plan review—even, potentially, for discretionary additional TOC incentives—the TOC Program can provide attractive incentives, but discretionary hurdles may remain.

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