

State Density Bonus

This Information Bulletin outlines the development and processing requirements to receive the benefits provided for under the State Density Bonus Law.

BACKGROUND

State Density Bonus Law (Gov. Code §65915 - 65918) allows a developer to increase density on a property above the maximum set under a city's local land use plan (Carlsbad General Plan). In addition, qualifying applicants can also receive reductions in required development standards such as setbacks, height limits, and parking requirements. In exchange for the increased density, a certain number of the new dwelling units must be reserved for very low, low, or moderate-income households, seniors or the other eligible projects listed below.

PROJECT ELIGIBILITY

Any housing development that proposes **five or more** units and incorporates at least one of the requirements below is eligible for a density bonus.

- 5% units restricted to "Very Low Income"
- 10% units restricted to "Low Income" or "Moderate Income"
- 10% units restricted for transitional foster youth, disabled veterans, or homeless
- 20% units for "Low Income" student housing
- A senior housing project
- An age-restricted mobile home park
- Projects which include a child care facility

Units must be restricted to their level of affordability for at least 55 years by a recorded document. Eligibility is established by state law. A city may not enact or impose local laws that conflict with State law or prohibit what the legislature intends to authorize.

HOW IS DENSITY BONUS CALCULATED?

The number of additional units allowed under this program is set on a sliding scale, based on two factors:

- The percentage of units in the project that will be set aside as affordable; and,
- The household income category of those affordable units (very low, low, or moderate household income).

Documents Referenced

- [State Density Bonus Law \(Gov. Code §65915 - 65918\)](#)
- [Density Bonus Ordinance \(Carlsbad Muni. Code Ch. 21.86\)](#)
- [Density Bonus Application Checklist](#)
- [Density Bonus Calculation Chart](#)

State law requires that all density calculations resulting in ANY fractional units shall be rounded up to the next whole number. This applies to both base density and density bonus calculations.

Notwithstanding the above, State law requires that the percentage of affordable units on the site must exceed the percentage established in the sliding scale. The city interprets this requirement to mean that the fractional percentage of units being reserved as affordable must be rounded down to the nearest whole number.

Also, while the city utilizes a "mid-range" density calculation for determining the allowable number of units on a property, state law requires that density bonus be calculated based upon the maximum density allowed under the zoning ordinance.

THEORETICAL EXAMPLE

A property is 1.003 net acres in size, with a zoning designation of R-15 (15 dwelling units per acre). This results in a maximum base density of 15.05 units for this site (1.003 acres multiplied by 15 units per acre), which rounds up to 16 units.

The applicant proposes that two of the units will be reserved for *low-income* households. This results in 12.5% of the 16 units that will be reserved for affordable housing, which rounds down to 12%.

Based on the sliding scale found in the attached Density Bonus Table, with 12% of the units reserved as affordable, the project's base density can increase by 23%, for a total of 19.68 units, which rounds up to 20 total units.

WHAT ARE CONCESSIONS/INCENTIVES?

In many cases, a development project must be modified and/or reduced to comply with established objective design standards and other regulations such as limits/requirements on building height, setback, parking, and on-site open space requirements.

Concessions and incentives, as defined under State law, allow a developer to deviate from those design standards and/or regulations when such regulations potentially make the project economically infeasible for the developer to build.

The number of concessions/incentives that can be requested by a developer varies by the amount and type of reserved affordable units being proposed, as reflected in the chart below.

Percentages between these ranges are rounded down. For example, the sample project that reserved 12% of the units for low income receives one concession/incentive.

Income Category	% of Reserved Units			
	5%	10%	15%	Up to 80%
Very Low	5%	10%	15%	Up to 80%
Low	10%	20%	30%	Up to 80%
Moderate	10%	20%	30%	Up to 20%
Senior	n/a	n/a	100%	n/a
Max. # of Incentives	1	2	3	4*
*To qualify for 4 incentives, a project must reserve <u>at least 80% of the units for lower income households</u> (very low, low, or combination thereof). The remaining 20% may be reserved for moderate income households.				

HOW DO YOU DETERMINE ECONOMIC INFEASIBILITY?

As part of the request for a concession/incentive, the applicant must provide evidence that the design standard/regulation causes the project to become too expensive to build. This can be accomplished through a financial pro-forma or other similar study or analysis.

The study must demonstrate that the requested concession/incentive results in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved affordable units.

WHAT ARE WAIVERS?

Waivers are yet another form of assistance under state law, separate from concessions and incentives. A waiver is a reduction in development standards and other regulations when those requirements potentially make the construction of the project *physically infeasible*, if not approved.

Unlike concessions and incentives, there is no limit in the number of waivers an applicant can request. Furthermore, while the developer must justify the need for a waiver, a pro-forma (or other similar analysis) is not required.

CAN THE CITY DENY A CONCESSION/INCENTIVE OR WAIVER?

Yes. Nothing in state law requires a local government to grant an incentive or waiver that will potentially result in a specific, adverse impact upon public health, safety, the environment or on any property listed in the California Register of Historic Resources. Issues to be aware of when evaluating potential development locations include the following non-exhaustive list:

- A proposed density bonus project that would be located within an airport compatibility zone found to be inconsistent with the compatibility criteria
- A proposed density bonus project that would be located within a FEMA floodway
- A proposed density bonus project that would be located at a Hazardous Waste Site, pursuant to California Government Code Section 65962.5
- A proposed density bonus project that would be located within a High Fire Severity Overlay Zone

Additionally, State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976, and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.

The burden of proof is on the city to demonstrate if there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Under the law, the court shall award the plaintiff attorney's fees and costs should the City not adequately justify the denial of a concession/incentive or waiver.

YOUR OPTIONS FOR SERVICE

Formal application(s) for a density bonus project will be required to submit information requested under the Density Bonus Supplemental Application Checklist, as required under Carlsbad Municipal Code §21.86.040. To improve process review, an appointment is required to walk through project submittal and processing requirements.

NOTE: Please refer to State Density Bonus Law Government Code (§65915 et seq.) for additional details with respect to conformance/associated regulations.

