

Density Bonus

This bulletin outlines the development allowances provided under Govt. Code [§65915](#), commonly referred to as state density bonus law. The bulletin is only intended to summarize the key provisions of state law rather than cite them in total. The document has been updated to include recent state legislation, including [AB 1287](#), the “middle-income homes density bonus law,” which became effective January 1, 2024.

BACKGROUND

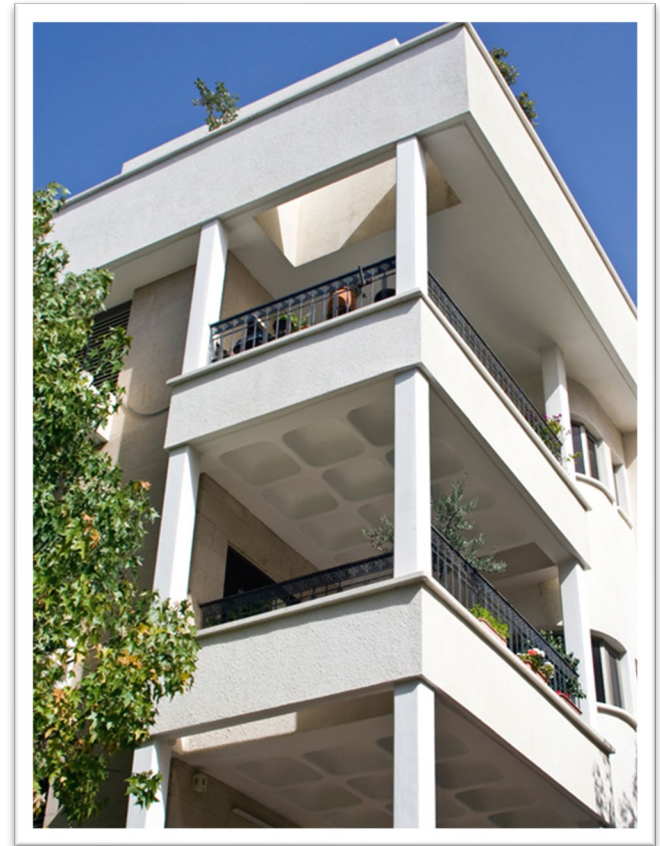
State density bonus law allows a developer to increase density (total number of homes) allowed on a property above the maximum set under a city’s local land use plan (Carlsbad General Plan) by as much as 100%. In addition, qualifying applicants can also receive reductions in required development standards such as setbacks and height limits when those standards prevent the applicant from achieving the density allowed under state law. Other tools include reduced or no parking requirements for certain project types.

In exchange for these benefits, a certain number of the new dwelling units within the development project must be reserved for lower-income households, seniors, or the other eligible affordable housing projects.

Pursuant to Government Code [§65915\(a\)\(1\)](#), each jurisdiction must adopt an ordinance that specifies how compliance with density bonus law will be implemented. Failure to adopt an ordinance does not relieve the city from complying with state density bonus law. As such, the city’s adopted ordinance, Carlsbad Municipal Code [§21.86](#), references state mandates where appropriate (as opposed to repeating state code requirements) and focuses more on the permit processing requirements for density bonus applications.

ELIGIBILITY

Any housing development that proposes five or more units and incorporates at least one of the following is eligible for a density bonus. Note: Accessory Dwelling Units (ADUs) may be included as part of a single-family or multi-family development, but ADUs do not count towards/against the total density allowed under state density bonus. Refer to info-bulletin [IB-111](#) for more on ADUs.



- At least 5% of the housing units are restricted to very low-income residents.
- At least 10% of the housing units are restricted to low-income residents.
- At least 10% of the units in a for-sale housing development are restricted for moderate-income.
- 100% of the housing units (other than manager’s units) are restricted affordable with a maximum of 20% of the units being moderate.
- At least 10% of the housing units are rent restricted at the very low-income level for transitional foster youth, disabled veterans, or homeless persons.
- At least 20% of the housing units are for low-income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city for very low-income units, and the land

has the appropriate permits and approvals and access to needed public facilities.

- The project is a senior citizen housing development; in which case, no affordable units are required.
- The project is a mobile home park that is age-restricted to senior citizens; in which case, no affordable units are required.

AFFORDABILITY DURATION

State density bonus law establishes how long an affordable unit must stay affordable.

- Affordable *rental* units must be restricted at the targeted income level group for at least 55 years.
- Affordable *for-sale* units must be restricted at the targeted income level group for at least 30 years, which starts after the initial sale of the affordable unit. Affordable units may be sold at a market price to other than targeted households provided that the sale results in an equity sharing agreement with the city.



DENSITY BONUS CALCULATIONS

Despite the city’s rounding requirements under CMC [§21.53.230](#) (Table A), for projects utilizing density bonus, Government Code §65915(q) requires that each component of any density calculation resulting in fractional units shall be separately rounded up to the next whole number. In other words, all density related calculations must be rounded up.

Base Density Calculation

Step one in calculating density bonus is to calculate the project’s **base density**, which represents the number of dwelling units allowed under the city’s General Plan, per acre of property. Calculating base

density under density bonus is no different from how the city calculates density for standard residential development projects, with the following exceptions:

- While the city uses developable (or net) acreage in determining density, density bonus law requires cities to use gross acreage. This allowance was clarified in an HCD [technical assistance letter](#) dated July 26, 2023.
- 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 city’s General Plan and zoning ordinance for the subject property.
- Pursuant to SB-330 (Housing Crisis Act of 2019), the city is prohibited from enforcing housing caps. As such, the housing caps in the city’s Growth Management Plan ([GMP](#)) cannot be applied to new housing development projects. Refer to [IB-132](#) for more information on SB-330 and Reso No. [2021-074](#) for the city’s suspension of the GMP cap limits and performance standard moratorium provisions.

Density Bonus Calculation

Step two in calculating density bonus is to calculate the project’s **density increase**, which represents the number of units allowed in addition to the base density units. These additional dwelling units are set per a sliding scale, based upon two primary factors:

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

For convenience, a Density Bonus Table is included on page six of the city’s Density Bonus Report ([Form P-1\(H\)](#)). As you will see from the table, the number of affordable units (far left column) and the level of affordability (top row) greatly influence the number of density bonus units that can be granted.

For example, a project that reserves 10% of its units as affordable for *very low-income* families is eligible for a 32.5% density bonus, as opposed to a density bonus of only 20% if those same affordable units were reserved for *low-income* families. Refer to info-bulletin [IB-137](#) (Carlsbad’s Housing Plan) for more information on household income and affordability.



INCLUSIONARY HOUSING CALCULATIONS

To help provide local affordable housing, the city in 1993 adopted an inclusionary housing ordinance ([§21.85](#)), which established the legal basis for requiring affordable (inclusionary) housing units in new residential development in the city.

For more information, refer to info-bulletin [IB-157](#) (Inclusionary Housing Program). While the city's inclusionary regulations are separate from density bonus law, there are a few important provisions in the city's inclusionary ordinance that directly affect density bonus projects, as reflected below.

- The city's inclusionary requirements apply to all proposed development projects that include residential units. This means that projects subject to the state density bonus law/city's density bonus ordinance ([§21.86](#)), must also comply with the city's inclusionary housing ordinance ([§21.85](#)).
- Projects proposing seven or more housing units are required to restrict at least 15% of the **total** proposed units for low-income households. The total proposed units include base density **and** density bonus units.
- When calculating inclusionary requirements, fractional units resulting in less than 0.5 are rounded *down* to the next whole number.
- The required affordable inclusionary units satisfy the required affordable density bonus units.

The city's application of its inclusionary code is consistent with [AB 2345](#) and the Department of Housing & Community Development's (HCD) [technical assistance letter](#) dated September 2, 2022 to the City of West Hollywood.

THEORETICAL EXAMPLE

Sometimes showing the math helps folks better understand how density bonus works. The following is a theoretical example on how these different density calculations are applied.

A property 1.003 net acres in size has a zoning designation of R-15 (11.5 to 15 dwelling units per acre). Under density bonus, 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 3 of the 16 units will be reserved for low-income households. This results in 18.7% of the units that will be reserved as affordable housing (3 affordable units divided by 16 base density units), which rounds up to 19%.

Based on the sliding scale found in the Density Bonus Table in the Density Bonus Report ([Form P-1\(H\)](#)), with 19% of the affordable units reserved for low-income families, the project's base density can increase by 33.5% or 5.36 units (16 base density units multiplied by 33.5%), which rounds up to 6 density bonus units for a total of 22 units for this project.

To satisfy the city's inclusionary ordinance, a total of 3.3 affordable low-income units are required for this project (15% inclusionary requirement multiplied by 22 total units), which rounds down to 3 units.

In this example, the 3 affordable low-income units satisfy the requirements under state density bonus law as well as the city's inclusionary housing ordinance.

SECONDARY DENSITY BONUS

AB 1287 (Alvarez, 2023) amended state density bonus law by requiring jurisdictions to award an additional (or second) density bonus for projects that have allocated a certain amount of affordable housing for very-low income, low-income, or moderate-income units, as summarized in the section below.

Minimum Eligibility

The proposed density bonus project must comply with one of the following affordability requirements to be eligible for an additional density bonus.

- A minimum of 15% of the base units are reserved for very low-income households; or
- A minimum of 24% of the base units are reserved for low-income households; or
- A minimum of 44% of the base units are reserved for moderate-income households.

Density Increase

Under state law, the city must grant the developer an additional density bonus if additional units are set aside for either very low or moderate-income households. Like traditional density bonus calculations, the secondary density bonus is also on a sliding scale, based on the project's base density.

For reference, the secondary density bonus allowances have been included in the Density Bonus Table found on page six of the city's Density Bonus Report ([Form P-1\(H\)](#)). To help illustrate how this secondary density bonus is applied, let us relook at the previous theoretical example.

Instead of 3 units, the applicant now proposes that 5 of the 16 units will be reserved for low-income households. This results in 31.2% of the units that will be reserved as affordable housing, which rounds up to 32%.

With 32% of the affordable units reserved for low-income households, the project's base density can increase by 50% or 8.0 units (16 base density units multiplied by 50%), for a total of 24 units.

Since more than 24% of the base units are being reserved for low-income households (31.2%, specifically), this project is eligible for a second density bonus. In this example, the applicant proposes to reserve an additional 15% of the base units for moderate-income households, which results in 2.4 units (16 base density units multiplied by 15%) that rounds up to 3 units.

With 15% of the affordable units reserved for moderate-income households, the project's base density can increase by an additional 50% or 8.0 units (16 base density units multiplied by 50%).

As a result, the total project size increases to 32 total units, 8 of which will be restricted affordable.

It is important to highlight that AB 1287 caps the affordable set aside at 50%. For projects that allocate the maximum of moderate-income units (44%), they would only be eligible to set aside another 6% of very-low income or moderate-income units to receive an additional bonus of 23.75% or 22.5%, respectively.



REMOVAL OF EXISTING RENTAL UNITS

Under density bonus law, projects that include the demolition or removal of affordable rental units are ineligible for density bonus unless the units are replaced concurrent with the development of the project. This provision applies to the following types of rental units:

- Units subject to recorded restrictions
- Units subject to rent control
- Units occupied by very low- or low-income households

If household rental income cannot be determined, the city may assume households are occupied by low-income households in the same proportion as low-income renters in the city, consistent with [AB 2556](#).

Additionally, under state law the affordable units required under density bonus may also be used to satisfy any replacement unit requirements. This allowance was clarified in an HCD [technical assistance letter](#) dated December 14, 2023.

DEVELOPMENT STANDARD DEVIATIONS

Traditional development projects must be designed to comply with city established development standards and design regulations such as building height limitations, setback requirements, minimum parking ratios, and on-site open space directives.

However, under state density bonus law, applicants can deviate from these development standards when found that the standards prevent the applicant from achieving the density allowed under the state law. There are two types of tools available to applicants:

- Incentives & Concessions
- Waivers



Incentives & Concessions

Incentives and concessions, as defined under state density bonus law, allow a developer to deviate from those requirements when modifying such regulations would provide “identifiable and actual cost reductions” to provide for affordable housing costs and rents. This requirement was clarified in the court decision of *Schreiber v. City of Los Angeles* (later codified as part of the passage of AB 1287) and the sections below reflect the holdings in that case.

Application

A few key considerations regarding the application of incentives or concessions:

- Under the government code, the terms “incentives” and “concessions” are used interchangeably. As such, the city considers them one in the same (“incentives/concessions”).
- A density bonus project is entitled to incentives/concessions even without a request for a density bonus --- if a developer provides the affordable housing specified under density bonus law, they are eligible for incentives/concessions.
- The city applies incentives/concessions to the development standards or design regulations requiring deviation, not to the individual situation.

For example, say a project proposes three separate buildings with each building requiring an increase in the city’s maximum building height standard. In this example, the city would require one incentive/concession for this deviation, even though the deviation applies to three separate buildings.

If that same project requires a deviation from the building height and rear yard setback

standards, the city will require two incentives/concessions since these are considered two different development standards.

- Pursuant to the *Schreiber* case, which was later codified as part of the passage of AB 1287, a developer is not required to provide financial evidence (i.e., pro forma) documenting that a requested incentive/concession will result in actual cost reductions. However, applicants need to reasonably document “why” the requested incentive/concession will reduce affordable housing development costs. As such, the city requires applicants to provide reasonable documentation to show that a requested incentive/concession will result in identifiable cost reductions to provide for affordable housing costs or rents.

Number Authorized

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

INCOME	% OF AFFORDABLE UNITS ¹				
Very Low	5%	10%	15%	16%	≥80%
Low	10%	17%	24%	---	≥80%
Moderate	10%	20%	30%	45%	20%
Student ²	20%	---	---	---	---
Incentives	1	2	3	4	5³

¹ The % of a project’s affordable units must be at least equal to the listed %.

² Lower-income student in a dedicated student housing development.

³ To qualify for 5 incentives, a project must reserve at least 80% of the units for lower income households (very low, low, or combination thereof). The remaining 20% may be reserved for moderate income households. The applicant shall also receive a height increase of up to three additional stories, or 33 feet.

As noted in footnote #1, when determining the appropriate number of incentives/concessions, a project’s percentage of affordable units must be “at least” equal to the percentages shown in the table above (§65915(d)(2)). In other words, the percentages in the table are minimums.

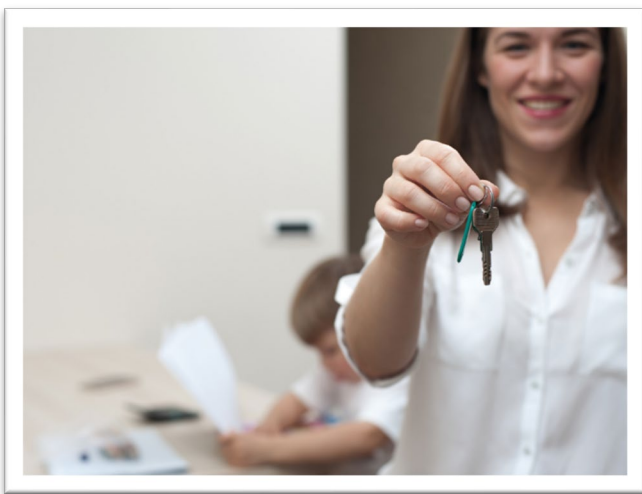
So, in the case of the theoretical example project that reserved 19% of the units for low-income, the applicant is eligible to receive two incentives/concessions. If affordable units are provided to satisfy the city’s inclusionary housing obligation above required density bonus affordable units, the total number of affordable units count

when determining the number of incentives/concessions allowed.

Grounds for Denial

Under the Schreiber case, the city must grant a requested incentive/concession unless it finds, under a preponderance of evidence, the following:

- The incentive/concession does not result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
- Granting the incentive/concession would have a specific adverse impact on public health or safety or on property listed on the California historical register, which cannot be mitigated, or would be contrary to state or federal law.



Waivers

Density bonus law offers another form of assistance to developers, separate from concessions/waivers, in the form of “waivers.” A waiver is a modification or reduction to established development standards or design regulations when those requirements potentially cause the construction of the development project physically infeasible, if not approved.

Application

A few key considerations regarding waivers.

- Waivers do not count as an incentive/concession and can be used in concert (combined) with incentives/concessions.
- The developer must provide sufficient documentation justifying why the city’s established development standard(s) or design regulation(s) physically preclude construction of the project and why the waiver(s) is necessary.

Sufficient documentation may include a written explanation of the physical constraints accompanied with an exhibit showing the site and developable envelope.

Number Authorized

Unlike concessions/incentives, applicants are entitled to waive any established development standards or design regulations that would physically preclude the development from achieving the allowances authorized under density bonus law. In other words, there is no limit in the number of waivers an applicant can request.

Grounds for Denial

The city is not required to grant or otherwise authorize a waiver if it finds that the requested deviation or modification causes a specific adverse impact on public health or safety and cannot be mitigated, would have an adverse impact on property listed on the California historical register, or would otherwise violate state or federal law.

Like incentives/concessions, the city must include a showing of substantial evidence when making a finding of denial on a waiver request.



PARKING ALLOWANCES

Despite the city’s parking requirements under CMC [§21.44](#), the city may not require more than the following parking ratios for a density bonus project (including parking for persons with disabilities):

Unit Type	Required Parking
Studio	1 space
One Bedroom	1 space
Two Bedroom	1.5 spaces
Three Bedroom	1.5 spaces
Four Bedroom	2.5 spaces



State law further limits parking requirements for specified projects as reflected below.

- 0.5 spaces per unit for projects with at least 11% very low income, 20% lower income, or 40% moderate income, when located within ½ mile of accessible major transit stop, which in the city is the Carlsbad Village Coaster Station or Poinsettia Coaster Station.
- No parking spaces are required for projects meeting the following:
 - 100% affordable to lower income residents, within ½ mile of a major transit stop, which in the city is the Carlsbad Village Coaster Station or Poinsettia Coaster Station.
 - 100% senior or special needs rental project affordable to lower income, either with paratransit service or within ½ mile of an accessible bus route that operates at least eight times per day.
 - Rental supportive housing development that is 100% affordable to lower income households.

Parking requirements may be satisfied by providing individual parking stalls or in tandem, so long as the stalls are provided onsite.

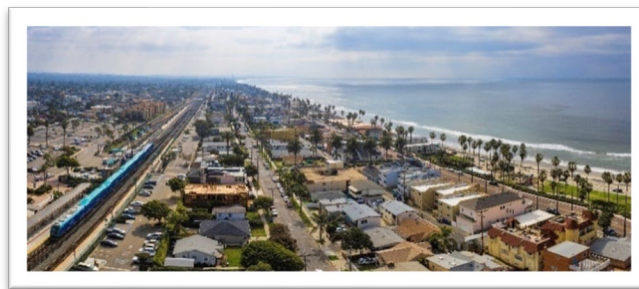
Requesting these parking standards does not count as an incentive/concession or waiver; however, an applicant may request further parking standard reductions using the incentive/concession or waiver allowances.

DENSITY BONUS APPLICATIONS

The city's Density Bonus Ordinance can be found in CMC [§21.86](#) and applicants should follow the permit submittal requirements and processes set forth in the Land Use Review Application ([Form P-1](#)).

Pursuant to changes in state density bonus law that went into effective in 2019, the city developed a supplemental form outlining the information that must be submitted for a complete density bonus application; referred to as the Density Bonus Report [Form P-1\(H\)](#). This includes project location, property description, project description, density calculations, and information on any requested incentives/concessions or waivers.

Once a development application is determined to be complete, the city, under state law, will notify the applicant of the level of density bonus and parking ratio the development is eligible to receive.



PROJECTS IN THE COASTAL ZONE

When a density bonus project is proposed in the coastal zone, legislation that went into effect in 2019 attempted to strike a balance between the state goals of promoting housing and protecting the coast.

Density bonuses, incentives/concessions, waivers, and parking reductions are to be permitted so that they are consistent with both density bonus law and the California Coastal Act. Granting of a density bonus or an incentive does not require a general plan, zoning, or local coastal plan amendment.

YOUR OPTIONS FOR SERVICE

To schedule an appointment to submit an application or to learn more about density bonus, please contact the Planning Division at 442-339-2600 or via email at Planning@carlsbadca.gov.

NOTE: State density bonus law is regularly updated and revised by the state legislature and the city may not be able to timely update this bulletin to reflect the most current provisions. Please refer to current state law ([§65915 et seq.](#)).