



DEPARTMENT OF CITY PLANNING

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TO: All Staff
Other Interested Parties

FROM: Lisa M. Webber, AICP *LMW*
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SUBJECT: **IMPLEMENTATION OF STATE DENSITY BONUS LAWS**

On September 28, 2016, Governor Brown signed AB 2501, AB 2556, AB 2442, and AB 1934 which amended the State Density Bonus Law (Government Code Section 65915). The amendments took effect on January 1, 2017. This memo will serve as interim guidance for staff and project applicants and does not create any new or additional City policies or regulations.

Additionally, this memo recognizes changes as a result of amendments made to the State Density Bonus Law through AB 2280 (2008).

Changes in State Law

Numerous minor changes and clarifications were made in the five state laws discussed in this memo. Many of these changes reflect current City practice. A summary of changes in state density bonus law that will result in significant changes to City practice are listed below. Staff and applicants are encouraged to refer to state law in Government Code Section 65915, as the list below is not an exhaustive list of the changes.

AB 2442

The law expands the categories of housing that can qualify for a density bonus. The following specialized housing types now qualify for an additional density bonus, provided the specialized units are subject to a very-low income affordability restriction for 55 years:

- 10% of total units reserved for **transitional foster youth**, as defined in Section 66025.9 of the Education Code; or
- 10% of total units reserved for **disabled veterans**, as defined in Government Code Section 18541; or
- 10% of total units reserved for **homeless persons**, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.).

Units set aside to serve these populations will qualify for an additional density bonus of 20% of the number of specialized units (not the total project). Because these units are income restricted, the projects will also qualify for the standard density bonus.

Example: If a site allows 100 units and 10 (10%) are reserved for transitional foster youth at very low-income, then the project is granted a density bonus of 35 units so long as both conditions are satisfied. The 35 units are derived in this manner:

- ✓ **33 Density Bonus Units** - 10 units (10% of total units) set-aside at very low-income = 32.5% density rounded up to 33% = 33 total density bonus units
- ✓ **2 Density Bonus Units** - 20% density bonus multiplied by the units giving rise to a density bonus which corresponds to 10 units for very-low income transitional foster youth in this example = 2 total density bonus units

AB 2501

To streamline the density bonus process, the law requires that cities adopt procedures and timelines, provide a list of all documents and information required for an application to be deemed complete, and notify the applicant whether the application is complete in a manner consistent with Section 65943.

The Department has adopted relevant procedures and timelines in Los Angeles Municipal Code Section 12.22 A.25. The list of documents and information required to be deemed complete can be found in the Master Land Use Application packet and the Affordable Housing Referral Form. More information is found in an April 15, 2012 Department memo titled "Affordable Housing Project Review Procedures." The assigned project planner notifies applicants when their application has been deemed complete in a manner consistent with Section 65943.

The law also clarifies and amends a number of the density bonus procedures as follows:

1. Density calculations that result in a fractional number are to be rounded-up to the next whole number. This applies to the following:
 - a. Base density
 - b. Number of bonus units
 - c. Number of Affordable Units required to be eligible for the density bonus
 - d. Number of replacement units
 - e. Number of required parking spaces
2. The ability of a local jurisdiction to require special studies is eliminated unless they meet the provisions of state law.

Financial pro-formas and third party reviews will no longer be required for any entitlement cases currently pending with the Department or new density bonus case filings.

3. The term "density bonus" is specified to mean a density increase over the maximum allowable gross residential density at the time of the date of the application.

The density bonus provided to a project will be calculated based on the number of units permitted on the date of the density bonus application.

4. A requested concession or incentive shall be granted pursuant to Government Code 65915 unless the City makes a written finding, based on substantial evidence, of any of the following: a) the concession or incentive "does not result in identifiable and actual cost reductions," to provide for affordable housing costs or rents for the targeted units; b) the concession or incentive has a specific adverse impact on public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable; or c) if the concession or incentive is contrary to state or federal law. Prior law allowed a concession or incentive to be denied if the City had substantial evidence that the concession or incentive was "not required in order to provide for" affordable housing costs

or rents for the targeted units, or substantial evidence in support of findings “b)” or “c)” above.

AB 2556

The law clarifies the implementation of the required replacement of affordable units in density bonus projects, first introduced by AB 2222 in 2014. The law further defines “equivalent size” to mean that as a whole, the new units must contain at least the same total number of bedrooms as the units being replaced. This prevents a developer from replacing multi-family bedroom units with more units that have fewer bedrooms.

1. For any dwelling units occupied on the date of application, if the income category of the units is not known, it shall be presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (CHAS) database.

The current proportion of lower income renter households (defined by those earning less than 80% of AMI in the current 2009-2013 CHAS data) in the City of Los Angeles is 67.5%. This figure was last updated July 6, 2016 and changes annually based on the most recent data. The data source is located here: <https://www.huduser.gov/portal/datasets/cp.html>.

2. For any dwelling units vacated or demolished within the five-year period preceding the application, if the income category of the units is not known, it shall be presumed that low- and very-low income renter households occupied these units in the same proportion of low- and very-low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy (CHAS) database.

The current proportion of low-income renter households (defined by those earning between 51%-80% of AMI in the current 2009-2013 CHAS data) in the City of Los Angeles is 18.8%, and the proportion of very low-income renter households (those earning below 50% of AMI) in the City of Los Angeles is 48.7%. These figures were last updated July 6, 2016 and change annually based on the most recent data. The data source is located here: <https://www.huduser.gov/portal/datasets/cp.html>.

AB 1934

The law provides certain development bonuses for commercial developers of non-residential floor area that partner with affordable housing developers in conjunction with their commercial projects. This law remains in effect only until January 1, 2022, unless repealed earlier.

A commercial developer of non-residential floor area, who has entered into an agreement to contribute affordable housing through a joint project (on-site) or two separate projects (off-site), shall be granted a development bonus for the non-residential floor area portion of the project. This may include any of the following incentives as approved by the Department of City Planning:

1. Up to a 20-percent increase in maximum allowable intensity;
2. Up to a 20-percent increase in maximum allowable floor area ratio;
3. Up to a 20-percent increase in maximum height requirements;
4. Up to a 20-percent reduction in minimum parking requirements;
5. Use of a limited-use/limited-application elevator for upper floor accessibility; and
6. An exception to a zoning ordinance or other land use regulation.

In order to qualify for a development bonus under this section, the provision of affordable housing must comply with the following:

1. A commercial developer shall partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.
2. An affordable housing agreement between the commercial developer and the housing developer shall identify how the commercial developer will contribute affordable housing and shall be approved by the Department of City Planning and the Housing and Community Investment Department.
3. The commercial developer may directly build the units, provide land to an affordable housing developer for construction of affordable housing (on site or elsewhere), or make a payment to an affordable housing developer to be used towards the costs of constructing the affordable housing project.
4. An applicant shall be ineligible for a development bonus if the housing replacement provisions of CA Health and Safety Section 65915 (c)(3)(A) are not met.
5. If the developer of the affordable units does not commence and complete the construction of those units in accordance with timelines ascribed by the agreement described in subdivision (c), the local government may withhold certificates of occupancy for the commercial development until the developer has completed construction of the affordable units.
6. A development bonus pursuant to this section shall not include a reduction or waiver of payment of a fee for the promotion or provision of affordable housing.
7. If affordable housing is provided off-site, it must be located within the City, in close proximity to public amenities (including schools and employment centers), and within one-half mile of a Major Transit Stop.

AB 2280 (2008)

Adopted in 2008, the same year as the City's density bonus ordinance, AB 2280 made several minor clarifications, most of which are already reflected in current City practice.

To be consistent with AB 2280, the Department will evaluate requests for a waiver or reduction of development standards (distinct from requested incentives and usually processed via Requests for Waiver or Modification of any Development Standard(s) Not on the Menu pursuant to LAMC 12.22 A.25(g)(3)) based on whether applying the development standard would physically preclude the construction of the housing development project that contains the permitted densities and incentives.

The bill also deleted the requirement that an applicant for a waiver or reduction in development standards show that the waiver or modification is "necessary to make proposed housing units economically feasible."