



Planning and Development Department

Land Use Planning Division

Implementation of State Density Bonus

Introduction

The State's Density Bonus Law (Government Code Section 65915¹) was enacted in 1979 to encourage the creation of more housing and address the severe shortage of affordable housing in California. The law allows a housing development² to exceed the maximum residential density, established for a site by the Zoning Ordinance, through the allocation of a specific percentage of deed-restricted affordable housing units included in the project.

This document describes evaluation guidelines and procedures for implementing State Density Bonus Law in the City of Berkeley, and includes instructions on how to determine the Base Project or maximum allowable density for a site in zoning districts that do not contain a density standard (expressed in "units per acre" or similar ratios of units per lot area), calculate the density bonus, determine concessions and waivers, and provide requirements for application submittal.

While this document establishes a general set of procedures, every density bonus project is unique. Staff will analyze each project, and review and discuss with applicants as needed.

Affordability Levels

Pursuant to § 65915 and the State Department of Housing and Community Development, commonly used income categories are approximated as follows, subject to variations for household size and other factors:

Table 1. Income Categories

Income Category	Percentage of Local Area Median Income (AMI)
Acutely Low Income	0-15% of AMI (Area Median Income)
Extremely Low Income	15-30% of AMI
Very Low Income	30% to 50% of AMI
Low Income	50% to 80% of AMI; the term may also be used to mean 0% to 80% of AMI
Moderate Income	80% to 120% of AMI

¹ All further references are to the Government Code unless otherwise indicated.

² A "Housing development," as used in § 65915(i), means a development project for five or more residential units, including mixed-use developments.

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Table 2. Affordability Restriction Durations

Requirement	Duration	Reference	Applies to
Qualifying Units	55 years minimum	§ 65915(c)(1)	Housing developments with rental units
Replacement Units	55 years minimum	§ 65915(c)(3) § 66300(d)	Housing developments with existing rental units on site ³
Inclusionary Housing Ordinance	In perpetuity	BMC 23.328	Housing developments with rental and ownership units, submitted on/after April 1, 2023
<i>Projects with prior vesting</i> (complete SB 330 Preliminary Application or issued building permit on/before March 31, 2023)			
Affordable Housing Mitigation Fee	In perpetuity	BMC 22.20.065 ⁴	Development projects with <u>rental</u> residential units and a complete SB 330 Preliminary Application or issued building permit on/before March 31, 2023
Inclusionary Housing Ordinance	In perpetuity	BMC 23.328 ⁴	Development projects with <u>ownership</u> dwelling units and a complete SB 330 Preliminary Application or issued building permit on/before March 31, 2023
³ Projects with ownership units are subject to § 65915(c)(2).			
⁴ Projects have vested in the ordinance version before April 1, 2023.			

Projects that Qualify for a Density Bonus

To be eligible for density bonus, a project needs to include residential units with affordability levels consistent with any one of the following (see § 65915(b)):

- At least 10 percent of the total units, including a shared housing building development, are affordable to lower income households;
- At least 5 percent of the total units, including a shared housing building development, are affordable to Very Low-Income households;
- A senior citizen housing development or a mobile home park that limits residency based on age requirements for housing for older persons, including a shared housing building development;
- At least 10 percent of the total dwelling units are affordable to Moderate-Income households, when they are for sale;
- At least 10 percent of the total units are for transitional foster youth, disabled veterans, or homeless persons that are affordable to Very Low-Income households;
- At least 20 percent of the total units for lower income students in a student housing development; or
- 100 percent of all units in the development, including total units and density bonus units, exclusive of a manager's unit(s), are affordable to lower income households, except that up to 20 percent of all units in the development, including total units and density bonus units, may be for Moderate-Income households. Includes shared housing building development.

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Residential Unit

With the exception of common interest development (i.e., condominiums, which requires provision of dwelling units) and student housing, a residential unit for purposes of State Density Bonus Law can be any of the following as defined in the California Building Code (CBC):

- Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.
- Live/Work Unit. A dwelling unit or sleeping unit in which a significant portion (≥ 50 percent) of the space includes a nonresidential use that is operated by the tenant.

Shared Housing Building and Unit

Per Government Code Section 65915(o)(6), a shared housing building and unit are defined as:

- Shared Housing Building: A residential or mixed-use structure with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence (more than 30 days) by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. The building may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. The building may include 100 percent shared housing units, and may have ground floor commercial space.
- Shared Housing Unit: One or more habitable rooms, not located within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence (more than 30 days), that meets the “minimum room area” specified in Section R304 of the California Building Code and complies with the definition of “guestroom” in Section R202 of the California Building Code.

Calculating and Documenting Density Bonus for Projects

There are four main steps for calculating and documenting density bonus:

1. Calculate the “Base Project,” i.e. the project that does not exceed the “maximum allowable residential density” for the project site.
2. Calculate the Density Bonus, i.e. the allowed density increase.
3. Accommodate the Density Bonus units (Concessions/Incentives and Waivers).
4. Include density bonus diagrams and compliance/calculation tables in the permit application plan set.

Step 1. Calculate the Base Project

State Density Bonus Law requires a City to grant a density increase over the otherwise maximum allowable gross residential density allowed under the zoning ordinance, specific plan,

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or land use element of the general plan applicable to the project (see 65915 (o) for the definition of “maximum allowable residential density”), where density is determined using dwelling units per acre.

The Berkeley Municipal Code (BMC) does not contain density standards expressed in “units per acre” for many zoning districts. Therefore, the objective development standards in the BMC define the building envelope for a project site: i.e., setbacks, parking, height, lot coverage, open space, and floor area ratio. The maximum allowable residential density is therefore the residential floor area that these objective standards can accommodate on the site, including any use permits and/or administrative use permits that modify these development standards to achieve the maximum development allowable on the site.³ This envelope becomes the “Base Project” for the purpose of calculating density.

Steps to identify the Base Project:

- a. Using the residential floor area (RFA) and unit count of the proposed project, calculate RFA per unit of the Proposed Project⁴. If there are live/work units in the project, include 50 percent of the floor area of these units and 100 percent of the unit count (i.e., four live/work units equate to four residential units). If there are shared housing units, include each shared housing unit and its pro rata share of associated common area facilities.
- b. Determine the maximum allowable RFA of a hypothetical Base Project that would fit on the site while fully complying with objective development standards (including use permits and/or administrative use permits requested for maximum development).
- c. Divide this area by the RFA per unit of the Proposed Project for the maximum number of units in the Base Project. Any fractional unit must be rounded up.⁵

Requirements for the Base Project:

The Base Project must comply with the following:

- All applicable zoning development standards that define the base permit building envelope.⁶
- All applicable building and fire codes.
- Be substantially consistent with the proposed project (not including waivers/reductions to allow the density bonus and any concessions).⁷

³ Use permits and administrative use permits that modify development standards vary by zoning district and can include permits for reduced setbacks, increased height, location of parking, etc. See [Housing Accountability Act & Density Bonus – Objective Standards memo, dated August 2, 2021](#).

⁴ Residential Floor Area (RFA) includes all floor area that serves the residential use, such as circulation to areas used by residents, residential amenities (exercise rooms, lounges, etc.), and lobby areas. RFA does not include mechanical rooms, utility rooms, or space that is dedicated to the operation of the building, and does not include area that is not included in gross floor area (BMC 23.106.030), such as vehicle or bicycle parking, or parking circulation. Stair and elevator floor area are counted only once at the floor level of their greatest area of horizontal extent.

⁵ Per §65915(q), “Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.”

⁶ Floor area that encroaches into the public right-of-way must be excluded, because it would require a permit from the Public Works Department.

⁷ The Base Project must be substantially consistent with the Proposed Project, i.e. similar residential amenities, usable open space configuration, ceiling heights, etc... This requirement reflects the City’s desire to ensure that the project that the applicant wishes to build is reflected in the Base Project, and is also intended to prevent applicants from creating a Base Project that would be far denser and/or poorer in design quality than the applicant would actually build, for the purpose of obtaining a larger density bonus.

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- Exclude any commercial space, with the exception of 50 percent of the floor area of live/work units.
- Include any residential amenities (such as common laundry rooms, lounges, etc.) that are in the Proposed Project.⁸

Step 2. Calculate the Density Bonus

Once the Base Project has been identified, the base density is allowed a density bonus increase per § 65915(f). If residential units are proposed to be demolished as a part of the project, those units must be replaced with equivalent units at the required affordability levels, as specified in § 65915(c)(3) and § 66300(d).

Steps to apply the density bonus:

- Determine the percentage and income level of affordable units proposed to qualify for the density bonus (“qualifying units”), per § 65915(b).
- Multiply the Base Project units by the corresponding density bonus increase percentage according to the tables in § 65915(f).⁹ Round any fraction up to the next whole number.
- Add the density bonus units to the Base Project. The RFA increase in the Proposed Project should correspond to the unit increase allowed by the density bonus. If the project includes live/work units, they must be included in the allowable unit count. The result is the maximum number of units allowed in the Proposed Project. Applicants can choose to utilize the full or partial amount of density bonus allowed in the Proposed Project.

Step 3. Accommodate the Density Bonus Units

Concessions/Incentives:

The applicant may request concessions/incentives, or modified development standards consistent with § 65915(k). Projects are entitled to receive up to four concessions/incentives, according to the criteria in § 65915(d)(2). Concessions for parking ratio maximums for the project can also be requested under § 65915(p). Applicants must supply a narrative for how the concession/incentive reduces project costs.

Waivers/Reductions:

The applicant may request any number of “waivers”, or modifications to development standards, in order to physically accommodate the Proposed Project (at the densities and with the concessions permitted) on the site. Section 65915(e) provides further information on the application of waivers.

An applicant is entitled to the prescribed density increase based on the number and affordability of qualifying units the project provides. The City does not have discretion over the density increase. However, staff can work with the applicant to determine which concessions and

Applicants should review with the project planner to determine substantial consistency between the Base and Proposed Projects.

⁸ This requirement is intended to prevent an applicant from counting non-residential space in the Base Project that is not actually intended for residential use, which would lead to a calculation of a larger bonus. Residential amenities (laundry rooms, meeting rooms etc.) will not count towards the Base Project when located in areas of the project where residential uses are not allowed according to the Zoning Ordinance (i.e. residential uses on the ground floor in the C-1 District).

⁹ Per § 65915(n), a City may grant a density bonus that is greater than what is described in subdivision (f), if permitted by local ordinance.

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waivers would result in the least detriment to the neighborhood and adjoining properties. A number of factors are considered in determining which standards to modify. These include neighborhood context, existing public policy or plan recommendations including the General Plan, Area Plans, BMC requirements, and environmental issues. These determinations are subject to further review by the Zoning Adjustments Board and, if applicable, Design Review Committee.

In general, any combination of zoning development standards may be modified to accommodate the density bonus units, including (but not limited to):

- Increased lot coverage
- Reduced setbacks
- Increased floor area ratio
- Increased building height / number of stories
- Reduced lot area per unit

Step 4. Density Bonus Submittal

For staff to effectively review your density bonus project, a combination of diagrams, compliance tables and calculation tables must be included in the project plan set. See [Zoning Project Submittal Requirements](#). Your project planner can provide examples of preferred diagram and table formats.