



Explaining the Compounding Effect of Santa Monica's Affordable Housing Production Program and State Density Bonus Law on Housing Projects

In April 2023, the City Council adopted zoning changes to implement the certified 6th Cycle Housing Element, as mandated by State law. These changes to development standards and the City's review process for housing projects went into effect on June 1, 2023. This memo explains how Santa Monica's Affordable Housing Production Program (AHPP) works together with State Density Bonus Law for Housing Projects.

Existing guides on the AHPP and State Density Bonus Law are attached for more detailed reference and can be found online on the Planning Resources webpage:

<https://www.santamonica.gov/planning-resources>

I. The Affordable Housing Production Program

What is Santa Monica's Affordable Housing Production Program ("AHPP")?

Since 1998, the AHPP has required that all developers of housing in the city provide a certain percentage of the project's total units as affordable units (defined by Area Median Income limits as published by the State Department of Housing and Urban Development applicable to the Los Angeles-Long Beach Metropolitan Statistical Area) or pay in-lieu fees.

The AHPP is the City's inclusionary housing ordinance and was created in 1998 as partial implementation of Proposition R, approved by Santa Monica voters in 1990. Proposition R requires that no less than 30 percent of all newly constructed multi-unit residential housing in the City each year be permanently affordable to, and occupied by, low- and moderate-income households. The 30 percent requirement is not calculated on a project-by-project basis.

As part of the State-mandated Housing Element, the City has committed to maintaining the AHPP in order to ensure that the City can plan for affordable housing units in compliance with State requirements.

When does the AHPP apply?

The construction of two or more dwelling units, not including Accessory Dwelling Units (ADUs) or Junior Accessory Dwelling Units (JADUs).

What does the AHPP require?

Number of Units in the Project	On-Site Requirement	Off-Site Option (in lieu of on-site requirement)
2-5 units	Pay the Affordable Housing Fee. Projects that provide an affordable housing unit in accordance with State Density Bonus Law are not required to pay the Affordable Housing Fee.	--
6-19 units	15% affordable units for up to 80% income households	--
20 units or more	15% affordable units with even distribution across 50% AMI, 80% AMI, and Moderate Income	20% affordable units at 50% or 80% AMI

50% Area Median Income (AMI) – Very Low Income

80% AMI – Low Income

80% to 120% of AMI – Moderate Income

Income limits available online at <https://www.santamonica.gov/housing-ahpp-limits>

II. State Density Bonus Law

What is State Density Bonus Law (“SDBL”)?

While Santa Monica has its AHPP, there are many cities throughout California that do not have an inclusionary housing ordinance that require the provision of affordable housing units. Think of SDBL as the State-level version of the AHPP except that under SDBL, developers can request a State-level bonus. The basic premise of SDBL is that developers receive a development bonus (i.e. more market-rate housing units) in exchange for providing affordable units in their projects.

Can SDBL’s development bonus exceed a City’s General Plan and Zoning?

Yes. SDBL requires that a density bonus be granted, even if it goes beyond a City’s General Plan and Zoning maximum limits.

What Projects are Eligible for SDBL?

A project must answer “YES” to all of the following:

1. Does the project have at least 5 base units (before State density bonus is applied)?
 - Note that pursuant to California Government Code Section 65915(o)(7), if the density allowed under the Zoning Ordinance is inconsistent with the density allowed under the Land Use and Circulation Element (LUCE) or a specific plan, the greater shall prevail.
2. If the parcel of land does or did have any rental unit occupied by low or very low income households, or any unit covered under rent control, currently or in the past 5 years, will the project replace all of those units at the same or lower affordability level (no net loss)?
3. Does the project provide on-site affordable units for at least 55 years?

What Other Benefits Does a Developer Receive from SDBL?

In addition to a density bonus, developers can also request relief from a City's zoning standards in terms of development standards and land use rules (types of allowed uses). Under SDBL, these requests are called incentives/concessions or waivers. Requests for incentives/concessions and waivers can only be denied under very limited circumstances as determined in State law.

What is an Incentive/Concession?

Incentives and concessions are intended to allow modifications to local zoning standards in order to reduce the cost of providing the on-site affordable units.

An example of an incentive or concession is additional floor area or allowing a different mix of allowed uses in the project.

A developer can request up to 4 incentives/concessions depending on the percentage of on-site affordable units provided in the project.

Can an Incentive/Concession be denied by the City?

Yes; however, the City must demonstrate that the incentive/concession would not result in cost reductions, which is very difficult to do. Although the City may request reasonable documentation, the City has very limited ability to require what information is provided by the applicant to support their request.

What is a Waiver?

Waivers are intended to allow modifications to local zoning standards if the applicant can demonstrate that applying the local standard would physically preclude construction of the project, including any density bonus units.

An example of a waiver is additional building height.

A developer can request an unlimited number of waivers.

The only exception is for housing projects where all the units are deed-restricted affordable units and the project has received unlimited density and additional height and is located in the Pico Neighborhood.

Can a Waiver be denied by the City?

Yes; however, a City cannot deny a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development including any State density bonus and requested incentives/concessions. Although the City may request reasonable documentation, the City has very limited ability to require what information is provided by the applicant to support their request.

How Much Bonus Can a Housing Project Receive?

Depending on the percentage of on-site affordable housing provided in a project, a project could receive up to a 50% density bonus.

How is the Bonus Calculated?

The bonus is calculated from the “base density” of the project. The “Base density” means the maximum allowable density that is allowed under local regulations before adding SDBL units. The percentage of required on-site affordable housing is calculated on the base density and not the total project.

III. Affordable Housing Production Program & State Density Bonus Law Work Together

How Does AHPP Work Together with SDBL?

Per SDBL, projects that provide on-site affordable housing units as required by the AHPP will meet the requirements to qualify for a State density bonus.

Why did Housing Projects get Larger Compared to Before the June 1st Zoning Changes?

In compliance with State law, the City was required to upzone all commercial areas of the city (instead of expanding into existing residential neighborhoods) to ensure that housing projects are feasible in order to meet State mandates for housing production. The California Department of Housing and Community Development (“HCD”) certified the City’s 6th Cycle Housing Element, based upon the upzoning approved by the City Council.

Per State law, the State density bonus is required to be applied on top of this recent local upzoning, which results in more market-rate units in a project.

In order to accommodate the additional bonus units, SDBL also allows a developer to request incentives/concessions or waivers to effectively increase the size of a project, usually through modifications to standards that control building envelope and building height.

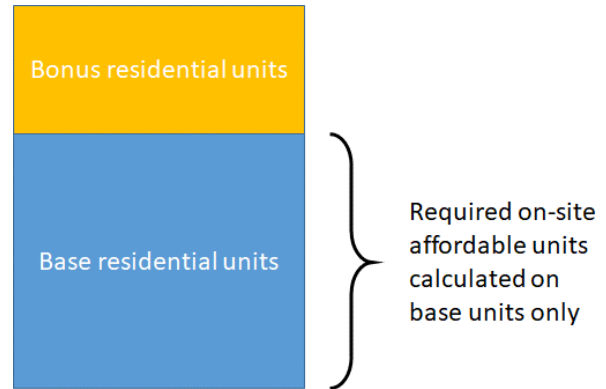
Why Does it Seem Like There Are So Few Affordable Units in Housing Projects?

The percentage of required on-site affordable units is calculated on the base density of a project (pre-density bonus), not on the total number of units in the proposed project (“bonus project”).

This way of calculating the number of required affordable units is the result of a new State law (AB 2334) that went into effect on January 1, 2023. AB 2334 requires the use of base density and does not allow for the calculation of required affordable units using the total number of units in a proposed project.

- *Example:*

- *Base project density: 100 units (calculated using zoning standards)*
- *Requested density bonus: 50% of base project for providing 15% affordable units*
- *Total units in the project with density bonus: $100 \times 50\% = 150$ units*
- *Required number of on-site affordable units is calculated on **base density** and **not the total project**:
 $15\% = 100 \times .15 = 15$ units*



Why Can't The City Require A Higher Percent Of Inclusionary Affordable Housing?

The State considers that requiring more than 15% of affordable housing for 80% or less AMI households as a condition to development of market rate housing as likely impairing economic feasibility for new housing development. Under State law, the HCD is authorized to review economic feasibility for any inclusionary ordinance that requires more than 15% of affordable housing if a city has not satisfied the State's housing mandates.