Development Services

CITY OF SAN MARCOS – OVERVIEW OF STATE DENSITY BONUS LAW AND LOCAL REGULATIONS

BACKGROUND

California's Density Bonus Law (Government Code Sections 65915 - 65918) allows a developer to increase density above the maximum allowed by the San Marcos General Plan, Zoning Ordinance or applicable specific plan, in exchange for providing affordable housing. Density Bonus Law also offers incentives and concessions, waivers of development standards, and parking reductions to reduce project costs.

References and Additional Information

Density Bonus
Government Code Section 65915-65918
SMMC Chapter 20.305

Applications and Forms
Informational Meeting Request
San Marcos Building Permit Application
San Marcos Planning Applications, Forms, & Fees

The City of San Marcos (City) implements Density Bonus Law through Chapter 20.305 of the San Marcos Municipal Code (SMCC). This guide summarizes eligibility requirements, outlines density bonus amounts, and provides an overview of procedures for requesting benefits under the law.

ELIGIBILITY

Housing development projects may be eligible for a density bonus if they meet the criteria established in SMCC Chapter 20.305. Generally, projects must include at least 5 units (prior to a density bonus) to qualify. Table 1 outlines basic eligibility requirements including percentage of affordable units, population groups served, or project types (e.g., senior housing, student housing). Housing development projects are ineligible for a density bonus, incentives, concessions, or waivers if they are on a site where certain types of rental units currently exist or existed in the past five years, unless those units are replaced in accordance with Government Code Section 65915(c)(3).

DENSITY BONUS AMOUNT

For most eligible projects, the allowable bonus in density is set on a sliding scale that is based on the affordability level of deed-restricted units (i.e., very low, low, or moderate income), and the percentage of base units that meet this affordability level. "Base units" refer to the units proposed in the project before any density bonus is applied (also called in Government Code Section 65915(o)(9)). A full table that summarizes the amount of density bonus allowed based on the level of affordability is included in Appendix A.

Table 1: Standard Eligible Housing Development Projects

Eligible Housing Development Projects	Basic Eligibility Requirements[1]
100 percent Affordable Units	All units lower-income (which include very low-income and low-income) except up to 20 percent of the units may be moderate-income.
Very Low-Income Units (up to 50% AMI[2])	At least 5 percent of the base units are very low-income.
Lower-Income Units (up to 80% of AMI[2])	At least 10 percent of the base units are lower-income (which include very low-income and low-income).
Moderate-Income Units (up to 120% AMI[2])	At least 10 percent of the base units are moderate-income. (For-Sale Projects Only)
Other Special Projects	Senior Housing; Housing for Transitional Foster Youth; Disabled Veterans, or Homeless Persons; Student Housing; Condominium Conversion; Childcare Facility; Land Dedication/ Donation; Commercial Developments

Note: (1) State Density Bonus law applies to housing development projects, not hotels or short-term lodging. (2)Income limits are based on Area Median Income (AMI), which is published annually by the California Department of Housing and Community Development (HCD): https://www.hcd.ca.gov/income-limits.

Source: Government Code Sections 65915;Government Code Section 65915.5; Government Code Section 65915.7.

RELATIONSHIP TO INCLUSIONARY HOUSING ORDINANCE

Housing development projects must comply with the City's Inclusionary Housing Ordinance (SMCC Chapter 20.310, Inclusionary Housing), and in doing so may access the full range of density bonus incentives, waivers, and concessions available under Density Bonus Law. Affordable units used to satisfy the City's Inclusionary Housing Ordinance are included as part of the total or base units of the project prior to any unit added by a density bonus.

SECONDARY DENSITY BONUS

State Density Bonus Law authorizes an additional ("secondary") density bonus for projects that exceed standard affordability

Applying Density Bonus Provisions

A developer proposes a 120-unit multifamily housing project on a 4-acre site zoned R-3-6 (Residential), which allows up to 30 dwelling units per acre (du/ac).

The developer proposes to reserve 15% (18 units) of the total base units for lower-income households, consistent with the City's inclusionary housing requirement.

At 15% lower-income, the project qualifies for a 27.5% density bonus.

→ Base Units: 120 base units (with 18 affordable units)
→ Bonus Units: 120 × 27.5% = 33 units
→ Total Units with Density Bonus: 153 units

requirements. A project qualifies if at least 15 percent of the base units are reserved for very-low income, 24 percent for lower-income, or 44 percent for moderate-income households. The secondary bonus is granted on a sliding scale relative to the project's base density and applies in addition to the standard density bonus allowances. For reference, the secondary density bonus allowances have been included in the Density Bonus summary table in Appendix A.

Secondary Density Bonus

If the developer were to change the level of affordability set-aside from 18 units (15%) for low-income households to 18 units (15%) for very-low income households, the project would qualify for higher primary density bonus and a secondary density bonus.

At 15% very low-income, the project qualifies for a 50% base density bonus, allowing an increase in the base density from 120 units to 180 units.

The project also qualifies for a secondary density bonus of up to 38.75%, which is applied on top of the base density bonus. This results in an additional 70 units, for a total of up to 250 units.

$180 \times 38.75\% = 69.75 \approx 70$ units

Total Potential Buildout:

→ Base Density: 120 units
→ Base Density Bonus (50%): +60 units
→ Secondary Density Bonus (38.75%): +30 units
→ Total Potential Units: 250 units (approx.)

INCENTIVES AND CONCESSIONS

The City is required to grant eligible housing development projects certain incentives or concessions in addition to any density bonus. These incentives and concessions are also available to qualifying projects even if no density bonus is requested, provided the project meets the specified eligibility criteria. Incentives and concessions include reductions in site development standards or modifications to zoning code or design requirements that result in cost savings to facilitate the provision of affordable housing (Government Code Section 65915(k)). The number of incentives or concessions a project may receive is based on the level and percentage of affordable units provided, as summarized in Table 2.

Incentives and concessions may include, but are not limited to:

- Increased building height
- Reduced setbacks
- Increase of floor area ratio or lot coverage
- Allowance of mixed-use zoning
- Reduced parking requirements
- Waiver of development standards pertaining to bulk, scale, and intensity
- Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs or rents.

[1] Concessions and incentives may not be applied in a manner that results in a project exceeding specified commercial floor area ratios. In addition, concessions, incentives, waivers, or reductions of development standards are not required to be granted for transient lodging uses (such as hotels), except where expressly allowed by law.

SPECIAL INCENTIVES

- **Student Housing Developments:** A student housing development project that includes at least 20 percent of the total units for lower-income students is eligible for one incentive or concession, while a student housing development that includes 23 percent or more of the total units for lower-income students is eligible for two incentives or concessions.
- **100 Percent Affordable Projects.** A housing development project that is 100 percent affordable, exclusive of the manager's units, or that is 20 percent moderate-income and 80 percent lower-income, may receive a height increase of up to three additional stories, or 33 feet if located within one-half mile of a major transit stop or in a very-low vehicle travel area.

Table 2: Number of Incentives/Concessions Allowed by Density Bonus Law

Number of Incentives/ Concessions	Percentage of Very Low-Income Units	Percentage of Lower-Income	Percentage of Moderate-Income Units*
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	16%	--	45%
5	100% lower-income; or 80% lower-income and 20% moderate-income		

**Note: For moderate-income units to qualify for a density bonus, incentives/concessions, or waivers, they must be for-sale.*

Source: Government Code Section 65915 (d)(2).

WAIVERS OR REDUCTION OF DEVELOPMENT STANDARDS

Separate from incentives and concessions, developers may request waivers of development standards if those standards would physically preclude construction of the density bonus project. Unlike concessions and incentives, there is no limit on the number of waivers that may be requested, and requesting waivers does not change the number of incentives or concessions a project may receive. Development standards include a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a housing development project pursuant to any ordinance, general plan element, specific plan, or other local condition. The developer must provide written documentation to justify why the waiver(s) is needed to construct the project.

CAN THE CITY DENY INCENTIVES, CONCESSIONS, OR WAIVERS?

Under State Density Bonus Law, the City's ability to deny any requested incentives, concessions, or waivers is limited. The City must grant any requested incentives, concessions, or waivers unless the City can prove any one of the following:

- **For incentives or concessions:** The incentive or concession would not result in identifiable and actual cost reductions necessary to provide units at an affordable rent or ownership cost;

- **For waivers or reductions of development standards:** The development standard to be waived or reduced does not physically preclude construction of the project at the permitted density and with the granted incentives or concession;
- The incentive, concession, or waiver would cause a specific, adverse impact on public health, public safety, or the physical environment that cannot be mitigated;
- The incentive, concession, or waiver would harm a property listed in the California Register of Historical Resources; or
- The incentive, concession, or waiver would conflict with state or federal law (Government Code Section 65915(d)(1)-(3),(e)(1)).

Applying Incentives, Concessions, and Waivers

The R-3-6 Zone requires a 15-foot front setback along the primary street and a 10-foot side setback for projects with four or more units.

→ To improve site efficiency, the developer requests to reduce the front setback from 15 feet to 10 feet and side setback from 10 feet to 7.5 feet.

→ These reductions qualify as incentives / concessions because they provide **measurable cost savings** (allowing more buildable area and reducing site grading and retaining-wall costs) thereby supporting the inclusion of affordable units.

The R-3-6 Zone limits building height to 45 feet or three stories. To achieve the density bonus units, the project proposes a four-story structure approximately 55 feet in height.

→ Because the existing height limit would **physically preclude** construction of the project at the permitted density (including the bonus units), the City must grant a height waiver unless it can make a specific finding under Government Code Section 65915(e) (e.g., that the additional height would result in an unmitigable adverse health, safety, or environmental impact).

REDUCED PARKING RATIOS

Housing development projects that qualify for a density bonus are also eligible for reduced parking ratios. These reduced ratios apply to all units in the housing development not just the affordable units used to qualify for the bonus. The applicable parking standards are based on the unit types included in the project and may be further reduced for certain projects that are located within one-half mile of a major transit stop (see Table 3). These parking ratios are inclusive of guest parking; however, applicants should refer to SMMC Chapter 20.340 for off-street parking requirements for the non-residential component of any mixed-use project. Requesting these parking standards does not count as an incentive, concession, or waiver; however, an applicant may request further parking reductions using the incentive, concession, or waiver allowances.

Table 3. Summary of Parking Ratios

Unit Type/ Location	Maximum Parking Ratios
0-1 bedroom	1 space/ unit
2-3 bedrooms	1.5 spaces/ unit
4+ bedrooms	2.5 spaces/ unit
Student housing	0 spaces/ bed
Within one-half mile of a major transit stop and meets qualifying income criteria	0.5 spaces per unit
Within one-half mile of a major transit stop and at least 40% of base units set aside for moderate-income households.	0.5 spaces per bedroom
Projects where 100% of the units are set aside as affordable (up to 20% moderate, 80% lower) that are located with one-half mile of a major transit stop.*	No off-street parking required.

** For For-rent senior housing; and special needs housing or a supportive housing development within one-half mile or with specified transit service may also qualify.*
Source: Government Code Section 65915(p)(1-3).

APPLICATION AND APPROVAL REQUIREMENTS

1. Applicants should follow the applicable Development Permit Application Guide (New Development or Existing Facility) located online at: https://www.san-marcos.net/departments/development-services/planning/applications-forms-fees.
2. Within 30 days of receiving an application, the City will notify the applicant if it is complete. Once deemed complete, the City will confirm the eligible density bonus, incentives, waivers, and concessions.
3. Prior to the City issuing development permits, applicants must enter into a density bonus housing agreement with the City. This is recorded as a deed restriction for applicable units.

For questions or to schedule an appointment, contact the Planning Division at (760) 744-1050 x3204 or via email at planningdivision@san-marcos.net.

Note: State density bonus law is regularly updated. Where there is any conflict between State law and the City's codified procedures, State law prevails (Government Code Section 65915 et seq.)

APPENDIX A: DENSITY BONUSES BY AFFORDABILITY

% of Base Units Reserved as Affordable	Primary Density Bonus					Secondary Density Bonus[6]	
	Very Low-Income[1]	Low-Income[2]	Moderate-Income[3]	Land Donation[4]	Senior Housing[5]	Very-Low Income	Moderate-Income
5%	20%	-	-	-	20%	20%	20%
6%	22.5%	-	-	-	20%	23.75%	22.5%
7%	25%	-	-	-	20%	27.5%	25%
8%	27.5%	-	-	-	20%	31.25%	27.5%
9%	30%	-	-	-	20%	35%	30%
10%	32.5%	20%	5%	15%	20%	38.75%	32.5%
11%	35%	21.5%	6%	16%	20%	38.75%	35%
12%	38.75%	23%	7%	17%	20%	38.75%	38.75%
13%	42.5%	24.5%	8%	18%	20%	38.75%	42.5%
14%	46.25%	26%	9%	19%	20%	38.75%	46.25%
15%	50%	27.5%	10%	20%	20%	38.75%	50%
16%	50%	29%	11%	21%	20%	38.75%	50%
17%	50%	30.5%	12%	22%	20%	38.75%	50%
18%	50%	32%	13%	23%	20%	38.75%	50%
19%	50%	33.5%	14%	24%	20%	38.75%	50%
20%	50%	35%	15%	25%	20%	38.75%	50%
21%	50%	38.75%	16%	26%	20%	38.75%	50%
22%	50%	42.5%	17%	27%	20%	38.75%	50%
23%	50%	46.25%	18%	28%	20%	38.75%	50%
24%	50%	50%	19%	29%	20%	38.75%	50%
25%	50%	50%	20%	30%	20%	38.75%	50%
26%	50%	50%	21%	31%	20%	38.75%	50%
27%	50%	50%	22%	32%	20%	38.75%	50%
28%	50%	50%	23%	33%	20%	38.75%	50%
29%	50%	50%	24%	34%	20%	38.75%	50%
30%	50%	50%	25%	35%	20%	38.75%	50%
31%	50%	50%	26%	35%	20%	38.75%	50%
32%	50%	50%	27%	35%	20%	38.75%	50%
33%	50%	50%	28%	35%	20%	38.75%	50%
34%	50%	50%	29%	35%	20%	38.75%	50%
35%	50%	50%	30%	35%	20%	38.75%	50%
36%	50%	50%	31%	35%	20%	38.75%	50%
37%	50%	50%	32%	35%	20%	38.75%	50%
38%	50%	50%	33%	35%	20%	38.75%	50%
39%	50%	50%	34%	35%	20%	38.75%	50%
40%	50%	50%	35%	35%	20%	38.75%	50%
41%	50%	50%	38.75%	35%	20%	38.75%	50%
42%	50%	50%	42.5%	35%	20%	38.75%	50%
43%	50%	50%	46.25%	35%	20%	38.75%	50%
44%	50%	50%	50%	35%	20%	38.75%	50%

Source: (1)Government Code Section 65915(f)(2); (2)Government Code Section 65915(f)(1); (3)Government Code Section 65915(f)(4); (4)Government Code Section 65915(g)(1); (5)Government Code Section 65915(f)(3) No minimum affordable units are required; (6)Government 65915(v)(1)&(2).