

State Density Bonus Law Sample Ordinance Template



CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT



STATE DENSITY BONUS LAW SAMPLE ORDINANCE

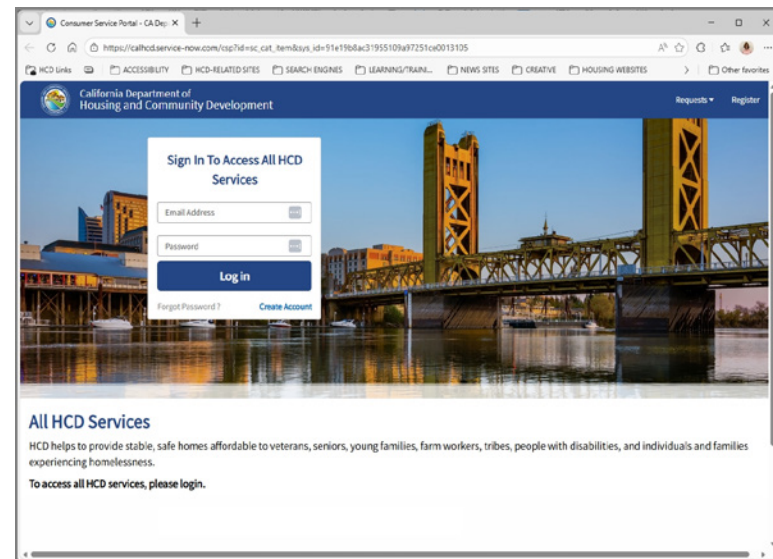
Government Code section 65915, subdivision (a)(1), states that a local government shall adopt an ordinance that specifies how compliance with State Density Bonus Law (SDBL) is implemented. This SDBL sample ordinance provides local governments with an example of the minimum requirements for an implementing ordinance that meets the requirements of state law. Additionally, since the legislature frequently amends the SDBL, the model ordinance purposely defers to state law to reduce the need for local governments to complete municipal code updates.

The SDBL sample ordinance is intended to guide a local government in its adoption and implementation of a local SDBL implementation ordinance. Local governments are responsible for complying with the SDBL. HCD is not responsible for any legal matter related to or arising from a locally adopted density bonus ordinance.

Additionally, Government Code section 65915, subdivision (n), allows local governments to grant a density bonus greater than what is required by the statute when qualifying projects meet the requirements of the law. If a local government grants density bonuses that exceed what is required by the statute, the local ordinance should account for those greater density bonuses.

In the Coastal Zone, HCD strongly encourages local governments to update their local coastal programs to comply with current provisions of the SDBL and to

consult with the California Coastal Commission for more information regarding processing local coastal program amendments for this purpose. HCD accepts requests for technical assistance from local governments through the online Housing Accountability Unit portal at https://calhcd.service-now.com/csp?id=sc_cat_item&sys_id=91e19b8ac31955109a97251ce0013105. The Housing Accountability Unit does not typically perform front-to-back draft SDBL ordinance reviews but may answer specific technical questions pertaining to local SDBL implementation.



^ **Above:** A screen capture of the HCD Housing Accountability Unit's online website portal where local governments can register to obtain assistance with answering technical questions pertaining to local SDBL implementation.

CHAPTER XXXX | DENSITY BONUS

SECTION XXXXXXXX – PURPOSE

This chapter implements the State Density Bonus Law, as required by California Government Code section 65915, by providing incentives and other benefits for the production of housing that is affordable to moderate, lower income, and other households in accordance with sections 65915 through 65918 of the California Government Code.

SECTION XXXXXXXX – APPLICABILITY

This chapter shall apply to any housing development, as defined in the State Density Bonus Law (Gov. Code, § 65915 et seq), that applies for and is eligible to receive a density bonus, concessions and incentives, waivers of development standards, parking reductions and all other benefits granted by the State Density Bonus Law when the applicant agrees to provide very-low, low, or moderate income housing units, or units intended to serve seniors, transitional foster youth, disabled veterans, homeless persons, or lower income students, or the proposed housing development meets other eligibility criteria in the threshold amounts specified in the State Density Bonus Law.

SECTION XXXXXXXX – DEFINITIONS

Terms are as defined in Government Code section 65915 as it may be amended from time to time.

SECTION XXXXXXXX – APPLICATION REQUIREMENTS

a. An applicant requesting a density bonus pursuant to the State Density Bonus Law shall submit any adopted fee and the following information as part of an application for a housing development:

1. Project plans and all other submittal documents as required pursuant to the submittal requirement checklist for a housing development.
2. A project summary table demonstrating the basis under the State Density Bonus Law on which the applicant is requesting a density bonus, including:
 - A. Maximum allowable gross residential density (dwelling units per acre) permitted by the zoning code, land use element of the general plan, or specific plan (whichever density is greatest) excluding any density bonus. If density is not regulated by a dwelling-units-per acre standard, then a calculation of base density as explained below in (i) of this Section, prior to the award of a density bonus;
 - B. Proposed number of affordable units by income level, special needs population, or other eligibility criteria, as applicable;

C. Proposed density bonus percentage and number of bonus units, or a lesser percentage of density increase, including, but not limited to, no increase in density pursuant to Government Code section 65915, subdivision (f);

D. Proposed additional density bonus percentage and number of bonus units pursuant to Government Code section 65915, subdivision (v), as applicable;

E. Overall number of dwelling units proposed, including base density units and density bonus units;

F. Residential gross floor area and total gross floor area proposed;

G. Proposed number of parking spaces;

H. Proposed unit and bedroom counts and unit types for the purpose of calculating parking requirements;

b. An identification of all incentives or concessions sought and reasonable documentation consisting of a brief written statement identifying actual, identifiable cost reductions that will result from the requested incentives or concessions to establish eligibility for the incentives or concessions. The brief written statement shall not include a study, feasibility analysis, or pro forma.

c. An identification of all waivers sought, including the required standard and the requested standard, and a brief written statement of why the development standard from which any waiver is sought would have the effect of physically precluding the construction of the housing development at the density and with any concessions or incentives permitted.

d. Any parking reductions requested pursuant to Government Code section 65915, subdivision (p).

e. If the housing development is proposed on any property that includes a parcel or parcels with existing dwelling units or dwelling units that have been vacated or demolished in the five-year period preceding the date of the application, an explanation of how the project meets the State Density Bonus Law's replacement housing requirements, set forth in Government Code section 65915, subdivision (c)(3) and in particular this information:

1. A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period; subject to any form of rent control through a public entity's valid exercise of its police power; or subject to a recorded covenant, ordinance, or law restricting rents to levels affordable to households of lower or very low income.

2. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household

size of residents occupying the dwelling units when the site contained the maximum number of dwelling units, if known.

- f. If the density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control and reasonable documentation that each of the requirements set forth in Government Code section 65915, subdivision (g) can be met.
- g. If the density bonus or incentive or concession requested is based all or in part on the inclusion of a child-care facility, a written summary explaining how the eligibility requirements set forth in Government Code section 65915, subdivision (h) have been met.
- h. If the density bonus or incentive or concession is based all or in part on the inclusion of affordable units as part of a condominium conversion, a written summary explaining how the eligibility requirements forth in Government Code section 65915.5 have been met.
- i. If the housing development is proposed to be located on any property that includes a parcel or parcels for which no density standard using dwelling units per acre is established by the general plan, specific plan, or zoning, then the applicant may provide a base density study by estimating the maximum number of units that could be provided by a hypothetical housing development consistent with all applicable development standards prior to the award of a density bonus, incentives or concessions, waivers, or parking reductions. If the applicant provides a base density study, the city shall accept it, provided that it includes all applicable objective development standards. If the applicant does not provide a base density study, the jurisdiction shall provide a base density study. The average unit size for the hypothetical housing development shall be the same size as the average unit size for the housing development proposed. The application for a density bonus shall include a table with calculations and diagrams for the hypothetical housing development used to determine the base density.
- j. 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.

SECTION XXXXXXXX – APPLICATION REVIEW PROCEDURE

- a. The density bonus application shall be processed concurrently with all other applications required for the housing development. The application shall be reviewed for completeness and the applicant shall be provided with notice in a manner consistent with the Permit Streamlining Act, Government Code section 65943.
- b. If the jurisdiction notifies the applicant that the application is determined to be complete, the jurisdiction shall provide the applicant with a determination of the amount of density bonus, the parking ratio for which the applicant is eligible, and whether the applicant has provided adequate information for the jurisdiction to make a determination as to the requested incentives, concessions, and waivers or reductions of development standards.

c. All requests for density bonuses, incentives or concessions, parking ratios, or waivers shall be considered and acted upon within the timelines prescribed by the Permit Streamlining Act, Government Code sections 65950 et seq. The approval body shall grant the requests pursuant to the State Density Bonus Law if the following findings are met:

1. The project is a housing development that qualifies for a density bonus and meets all applicable statutory eligibility requirements to qualify for the State Density Bonus Law;
2. The housing development has agreed to provide sufficient affordable units or otherwise meets all statutory eligibility requirements to receive a density bonus;
3. If a reduced parking ratio is requested pursuant to Government Code section 65915, subdivision (p), the housing development meets all statutory eligibility requirements);
4. If incentives or concessions are requested, the housing development meets all statutory eligibility requirements, unless findings are made pursuant to Government Code section 65915, subdivision (d)(1); and
5. If waivers are requested, the development standards requested to be waived would physically preclude construction of the housing development at the density and with any concessions unless findings are made pursuant to Government Code section 65915, subdivision (e)(1).

d. The granting of a density bonus, incentive or concession, or waiver of a development standard pursuant to this section shall not be interpreted, in and of itself, to require a general plan amendment, development code amendment, zone change, other discretionary approval.

SECTION XXXXXXXX – AFFORDABILITY REQUIREMENTS

a. A housing development shall meet all affordability and resale requirements pursuant to Government Code section 65915, subdivision (c).

b. The applicant shall enter into an affordable housing agreement with the jurisdiction in a form approved by the City Attorney, to be executed by the City Manager, to ensure that the requirements of this section are satisfied. The affordable housing agreement shall guarantee the affordability of the affordable units for a minimum of 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. The affordable housing agreement shall identify the type, size, and shall specify phasing of the affordable units in relation to the market-rate units.

c. The executed affordable housing agreement shall be recorded against the housing development prior to final or parcel map approval, or where a map is not being processed, prior to issuance of building permits for the housing development project. The affordable housing agreement shall be binding on all future owners or successors in interest.

d. <<OPTIONAL IF LOCAL GOVERNMENT HAS AN INCLUSIONARY ZONING REQUIREMENT>>All housing development projects are required to provide affordable housing units in accordance with Chapter XXXX, Inclusionary Housing, of this title. If an applicant seeks to construct affordable housing to qualify for a density bonus in accordance with the provisions of this chapter, the affordable units provided to meet the inclusionary requirement established pursuant to Chapter XXXX of this title shall be counted toward satisfying the density bonus requirements of this chapter, provided that such units meet the requirements of both chapters.

SECTION XXXXXXXX – CONFLICTS WITH STATE LAW

If any portion of this chapter conflicts with the State Density Bonus Law or any other applicable state law, state law shall supersede the conflicting provision. Any ambiguities in this chapter shall be interpreted to be consistent with State Density Bonus Law. Statutory references in this ordinance include successor provisions.



California Department of Housing
and Community Development

651 Bannon Street
Sacramento CA 95811

www.hcd.ca.gov

