

CHAPTER *.*

**AFFORDABLE HOUSING
DENSITY BONUS**

Sections:

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***.*.010** Purpose. As required by California Government Code Section 65915, the purpose of this chapter is to offer a density bonus or other incentives or concessions to developers for the production of housing units affordable to very low, lower, and moderate income households and to senior citizens and/or citizens with disabilities. In offering these incentives, it is the intent of this chapter to carry out the requirements of California Government Code Sections 65915, 65916, and 65917. The regulations set out in this chapter shall apply to unincorporated areas of El Dorado County that are not within the Tahoe Regional Planning Agency's jurisdictional area.

***.*.020** Definitions. For the purpose of this chapter, certain words and phrases are construed as defined herein. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future.

- A. "Affordable housing" means housing affordable to very low, lower, or moderate income households.
1. "Very low income household" means a household that earns less than fifty (50) percent of the area median income for El Dorado County, adjusted for family size and updated annually. This term includes extremely low income households earning less than thirty (30) percent of the area median income for El Dorado County, adjusted for family size and updated annually. See Health and Safety Code Sections 50105.
 2. "Lower income household" means a household that earns between fifty (50) and eighty (80) percent of the area median income for El Dorado County, adjusted for family size and updated annually. See Health and Safety Code Section 50079.5.
 3. "Moderate income household" means a household that earns between eighty (80) and one-hundred twenty (120) percent of area median income for El Dorado County, adjusted for family size and updated annually. See Health and Safety Code Section 50093.

- B. "Child care facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.
- C. "Condominium" is an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. See California Civil Code Section 1351(f).
- D. "Density Bonus" means a density increase over the otherwise allowable maximum residential density under the applicable General Plan designation and Zone District.
- E. "Development standard" means a site or construction condition that applies to residential development pursuant to any ordinance, general plan element, specific plan, or other regulation for which the application of would physically preclude the construction of the housing development at the density allowed.
- F. "Incentive" or "concession" represent any of the following and further defined in §.040(B)(2):
1. Reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in the setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions;
 2. Other concessions or incentives of a regulatory nature identified in the County's Incentive Based Affordable Housing policy [note: policy is in development and not yet adopted by the Board of Supervisors], or proposed by the applicant or the county that result in identifiable, financially sufficient and actual cost reductions;
 3. A density bonus incentive does not include the provision of direct financial or land incentives to the applicant by the county, or the waiver of fees or dedication requirements.
- G. "Household" means all persons, related or unrelated, occupying a single housing unit.
- H. "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:
1. A common area owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.
 2. A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Civil Code Section 1367 or 1367.1.

- I. "Qualifying housing development" means a single project for five or more residential units constructed within the unincorporated area of El Dorado County. For the purpose of calculating a density bonus, the residential units must be on contiguous sites that are the subject of one development application.
- J. "Senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development. See Civil Code Section 51.3.

***.*.*.030** Eligibility for Bonus, Incentives, and/or Concessions.

- A. In order to be eligible for a density bonus or other incentive or concession as provided by this chapter, a proposed qualifying housing development shall consist of five (5) or more residential units, either for rent or for sale were at least one unit is affordable to very low, lower, or moderate income households.
- B. A developer shall be granted a density bonus, incentives and/or concessions described in Section ***.*.*.040** when he or she agrees to provide at least any one of the following:
 - 1. At least five (5) percent of the total number of proposed units for very low income households, as defined in California Health and Safety Code Section 50105;
 - 2. At least ten (10) percent of the total number of proposed units for lower income households, as defined in California Health and Safety Code Section 50079.5;
 - 3. A senior citizen housing development as defined in Section 51.3 of the Civil Code; and/or
 - 4. At least ten (10) percent of the total number of proposed units in a condominium project (as defined in subdivision [f] of Section 1351 of the Civil Code) or in a planned development (as defined in subdivision [k] of Section 1351 of the Civil Code) for persons and families of moderate income, as defined by California Health and Safety Code Section 50093.
 - 5. The donation of land sufficient in size to permit development of at least 40 affordable housing units consistent with Government Code Section 65915(h) and section ***.*.*.040**(4) of this Ordinance.
 - 6. The payment of a fee in lieu of providing affordable housing units as established in this section and section ***.*.*.040**(5) of this Ordinance.
- C. In order to be eligible for a bonus, incentive, and/or concession, the applicant shall ensure that all provisions of this chapter are met.
- D. All eligible developments shall comply with the Fair Housing Act (FHAct) which protects all citizens from discrimination on the basis of race, color, national origin, religion, sex handicap or familial status (families with children under the age of 18 living with parents or legal guardians; pregnant women and people trying to get custody of children under 18 years of age).
- E. For the purposes of calculating the amount of the density bonus pursuant to ***.*.*.040**, the applicant who requests a density bonus pursuant to this ordinance shall elect whether the bonus shall be awarded on the basis of section B. 1, 2, 3, 4, 5, or 6 above.

F. "Total units" does not include units added by a density bonus awarded by this chapter or by any other local policy granting a greater density bonus.

*****.040** Bonuses, Incentives, and Concessions Allowed. Qualifying housing development projects that satisfy all applicable provisions of this chapter shall be entitled to a density bonus and additional incentives or concessions as follows:

A. Density Bonus.

1. The density bonus allowed by this chapter shall consist of an increase of at least twenty (20) percent in the number of dwelling units over the otherwise maximum allowable residential density under the applicable general plan designation and zone district. The amount of density bonus to which an applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentages established in *****.030(B)**. The applicant who requests a density bonus pursuant to this subsection shall elect which bonus shall be awarded based on the subparagraphs below.

a. For each one (1) percent increase above five (5) percent in the percentage of units affordable to very low income households, the density bonus shall be increased by two and one-half (2.5) percent up to a maximum of thirty-five (35) percent, as calculated as follows: or

Percent Very Low-Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

b. For each one (1) percent increase above ten (10) percent in the percentage of units affordable to lower income households, the density bonus shall be increased by one and one-half (1.5) percent up to a maximum of thirty-five (35) percent as calculated as follows; or

Percent Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5

- c. A senior citizen housing development as defined in Section 51.3 of the Civil Code or mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code up to a maximum of twenty (20) percent.
2. If a proposed development does not meet the requirements of ****.**.030(B)** paragraphs (1), (2), or (3), but the applicant proposes to construct a condominium project or planned development in which at least ten (10) percent of the units are reserved for moderate income households, the developer shall be granted a density bonus of at least five (5) percent over the otherwise maximum allowable density under the applicable general plan designation and zone district.
- a. For each one (1) percent increase above ten (10) percent of the percentage of units affordable to moderate income households, the density bonus shall be increased by one (1) percent, up to a maximum of thirty-five (35) percent as calculated as follows;

Percent Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20...35	15...35

3. When an applicant proposes to construct a housing development that conforms to ****.**.030(B)** and includes a child care facility that will be located on the premises of (either as part of or adjacent to) the project, the County shall grant either of the following consistent with Government Code Sections 65915(i)(2) and (3):
- a. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.
 - b. An additional incentive or concession that contributes significantly to the economic feasibility of the construction of the child care facility.

The County shall require, as a condition of approving the housing development that the following shall occur:

- c. The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable per this section.

The County shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

- 4. When an applicant for a qualifying housing development project donates land for the development of affordable housing consistent with Government Code Section 65915(h), he/she shall be entitled to fifteen (15) percent increase above the otherwise maximum allowable density under the applicable general plan designation and zone district.
 - a. For each one (1) percent increase above the minimum ten (10) percent land donation required under Government Code Section 65915(h)(2), the density bonus shall be increased by one (1) percent, up to a maximum of thirty-five (35) percent.
 - b. The increase allowed under this section may be combined with any increase in density allowed for under ****.**.030(B)**, as long as the total increase does not exceed thirty-five (35) percent as calculated as follows;

Percent Very Low-Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20...35	25...35

- c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan and zoning designation, and is or will be served by adequate public facilities and infrastructure.
- d. As part of the application, the developer must identify a party that has agreed to assume ownership and management of the donated land.
- 5. At such time that the Board of Supervisors adopts a fee in lieu for providing the affordable housing units established by ****.**.030**, an applicant may choose to pay said fee in lieu of providing affordable housing.
 - a. Determination of Fee. The amount and calculation of the affordable housing in-lieu fee and the Affordable Housing Trust Fund Guidelines shall be established by resolution of the Board of Supervisors.

- b. Timing of payment. The in-lieu fee shall be calculated at the time of building permit application. The fee shall be paid at the time of issuance of the building permit, unless proof is provided that the required affordable housing units will be constructed on site or that an alternative equivalent action was previously approved in accordance with this ordinance.
6. When an applicant for a qualifying housing development acquires existing market rate dwelling units and enforces price restrictions in compliance with this ordinance on the rental or sale of the existing market rate dwelling units, he/she shall be entitled to fifteen (15) percent increase above the otherwise maximum allowable density under the applicable general plan designation and zone district. Property must be approved as to the appropriateness of the conversion from market rate to income restricted units to minimize neighborhood impacts and may require design upgrades through the Design Review process, for compliance with current standards and regulations.
7. The density bonus shall not be included when determining the percent of affordable housing units.
8. All density calculations resulting in fractional units shall be rounded up to the next whole number.

B. Incentives or Concessions.

1. Applicants shall receive the incentives or concessions based on the following schedule:
 - a. One incentive or concession for projects that include at least ten (10) percent of the total units for lower income households, at least five (5) percent for very low income households, or at least ten (10) percent for persons and families of moderate income in a condominium or planned development project.
 - b. Two incentives or concessions for projects that include at least twenty (20) percent of the total units for lower income households, at least ten (10) percent for very low income households, or at least twenty (20) percent for persons and families of moderate income in a condominium or planned development project.
 - c. Three incentives or concessions for projects that include at least thirty (30) percent of the total units for lower income households, at least fifteen (15) percent for very low income households, or at least thirty (30) percent for persons and families of moderate income in a condominium or planned development project.
2. A qualifying housing development shall be entitled to the following concessions or incentives at a rate consistent with ****.**.040(B)(1)** above.:
 - a. A reduction of 10 percent off-street parking from the required parking limits as listed in California Government Code 65915(p)(1) as long as the development is:
 - i. Within 750 feet of a public transit stop,
 - ii. Within 1500 feet of an existing shopping center containing three or more separate use tenants,
 - iii. Within 2500 feet of an existing public school, or

- iv. Exclusively for senior citizens as defined by California Civil Code Section 51.3

And as long as the approving body can make the following findings:

- i. The intent of the Off-Street Parking and Loading chapter of the Zoning Ordinance is preserved; and
 - ii. The modification will not be detrimental to the public health and safety.
- b. A 10 percent reduction in the proportional site and parking lot landscaping standards by a ratio equal to the number of affordable housing units to total housing units within a given project.
 - c. A 10 percent reduction of the open space required by the General Plan or Zoning Ordinance (if any).
 - d. A 50 percent reduction in any setbacks required by the zone district.
 - e. A 15 percent increase in height for multi family qualifying housing developments.
 - f. Waiver of County filing or processing fees on permits and applications in proportion with the percentage of affordable units.
 - g. Approval of mixed use zoning in conjunction with the qualifying housing development if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the qualifying housing development and the existing or planned development in the area where the proposed qualifying housing development will be located.
 - h. Other regulatory incentives or concessions proposed by the developer or the county that result in identifiable, financially sufficient, and actual cost reductions without adverse effect upon health, safety, and/or the physical environment, consistent with Government Code Section 65915(1).

C. Waiver or Concession of Development Standard.

- 1. In the event an applicant contends that the application of a development standard has the effect of precluding the construction of housing that meets the criteria of subsection ***.**.030(B)** of this section, the applicant may apply for a waiver or modification of the development standards. The waiver or modification shall be the minimum necessary to allow the project to be constructed.
- 2. Nothing in this subsection shall be interpreted to require the granting of an incentive that would have a specific adverse impact, as defined in paragraph (2) of subsection (d) of Government Code Section 65589.5, upon the health, safety, or physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subsection shall be interpreted to require the granting of a density bonus incentive that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

***.**.050** Processing of Requests.

- A. Requests for density bonuses, incentives, and/or concessions shall be made as part of and evaluated through the County's existing land use permit processes where such permit(s) is

required pursuant to Section 17.10.010, Section 17.14.140, Chapter 17.22, or Section 17.74.115. Where no discretionary permits are otherwise required for a project, consideration of density bonuses, incentives, and/or concessions shall be made through a site plan review application as provided in Section 17.22.300 et.seq.

B. All requests for density bonuses, incentives, and/or concessions shall be subject to the following:

1. Supporting Information. If regulatory concessions are sought, the developer shall include information with the application, based on building industry standards, to substantiate that any requested waiver or modification of zoning or subdivision standards is necessary to make housing units affordable to very low, lower, or moderate income households.
2. Initial Review. Bonus, incentive, and/or concession requests shall be included as part of the land use permit application and shall be reviewed by the Planning Director or his/her designee. The Director or his/her designee shall notify the applicant within thirty (30) days of the acceptance of the project permit application as complete whether the project qualifies for the requested additional density, incentive, and/or concession.
3. Criteria to be Considered. The requested bonus, incentive, and/or concession shall be reviewed for consistency with the El Dorado County General Plan and other applicable county regulations. Particular attention shall be given to application of Housing Element policies and policies addressing the source and distribution of potable water, the type and scale of available wastewater disposal and treatment, and roadway capacity.
4. Findings for Approval.
 - a. In addition to the findings required for approval of the proposed project, support of a density bonus by the Planning Director, Zoning Administrator, Planning Commission, and/or Board of Supervisors, as appropriate, shall also require the following special findings:
 - i. There are sufficient provisions to guarantee that units will remain affordable in the future, consistent with the requirements of ****.**.060** and the California Government Code Sections 65915(c) and 65915(h)(4).
 - ii. Adequate evidence exists to indicate that development of the subject property in compliance with a valid land use permit or entitlement will result in the provision of housing affordable to very low, lower, and moderate income households in a manner consistent with the purpose and intent of this chapter.
 - iii. The number of dwelling units approved by the land use permit or entitlement can be accommodated by existing and/or planned infrastructure, consistent with General Plan requirements for concurrency for such services.
 - b. The County shall grant the requested bonus, concession(s), and/or incentive(s) requested by the applicant unless the County makes a written finding, based upon substantial evidence, of either of the following:
 - i. The concession or incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Section

- 50052.5, or for rents for the targeted units to be set as specified in California Government Code Section 65915(c); or
- ii. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of California Government Code Section 65589.5, upon health, safety, the physical environment, or 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 economically infeasible to very-low, lower, and moderate income households.

..060** Continued Availability of Affordability.

A. Affordability shall be based on the following:

1. Affordable Rental Housing is a rental dwelling for which the total monthly expense (rent plus the standard El Dorado County Housing Authority utility allowance) does not exceed thirty (30) percent of the maximum monthly income limit for Very Low- and Low-income households in El Dorado County as established and updated yearly by the state Department of Housing and Community Development. (California Government Code Section 65915(c)(1))
2. An Affordable Purchase Price is the sales price at which the Affordable unit will be offered to prospective Eligible Buyers. The monthly housing cost factors required to be included in the calculation of the Affordable Housing Price shall be provided by the County based on the average total monthly housing expenses during the first calendar year of a household's occupancy, including but not limited to property taxes, homeowner's insurance, homeowner's association dues, if any, mortgage loan principal and interest, mortgage insurance, and Mello Roos or other applicable assessments, which are equal to or less than one-twelfth (1/12th) of thirty-five percent (35%) of no greater than one hundred and twenty percent (120%) of Median Family Income, adjusted for Household Size based on an occupancy standard of one-person per bedroom, plus one additional person (for example, a three-bedroom home will be priced based on the income of a four-person family).

B. The land use permit application for the development project shall include the procedures proposed by the developer to maintain the continued affordability of all very low, lower, and senior citizen units as follows:

1. Maintain affordability for at least thirty (30) years for units that were built with the assistance of county funding, including assistance in the forms of contributions to the cost of infrastructure, write-down of land costs, or construction cost subsidization.
2. Maintain affordability as required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, typically for a minimum of thirty (30) years.

C. Moderate income condominium or planned development units approved and/or constructed pursuant to this chapter shall remain affordable for at least twenty (20) years.

1. If such units are sold within the twenty (20) year affordability time frame, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
2. The County shall recapture its proportionate share of appreciation, which shall then be used within three (3) years for any of the purposes promoting home ownership as described in Health and Safety Code Section 33334.2(e).

D. Agreement with County. The developer shall be required to enter into an Affordable Housing Agreement with the County. The Agreement shall delineate those concessions to be made by all parties to ensure that affordable housing can be and is constructed and remains available to the residents for a period of time consistent with subsection ****.**.060(B) and (C)** above, including that the developer or his/her successor in interest shall not sell, rent, lease, sublet, assign, or otherwise transfer any interests for same without written approval of the El Dorado County Housing Authority, confirming that the cost of the units will remain consistent with the limits established for the affected density bonus. The Agreement shall also establish specific compliance standards and remedies available to the County upon failure by the developer to make the target units available to intended households.

****.**.070 Location of Bonus Units.** Units affordable to very low, lower, or moderate income households constructed pursuant to this chapter shall be approved under a single development application and built within but no farther than one-quarter mile of the boundary of the proposed housing development unless the County and developer agree within the Affordable Housing Agreement to an alternative site for development.

****.**.080 Time of Construction and Occupancy.** Units affordable to very low, lower, or moderate income households must be constructed concurrently with nonrestricted units and shall be made available for occupancy not later than the time at which the first nonrestricted dwelling unit is available for occupancy, unless the County and developer agree within the Affordable Housing Agreement to an alternative schedule for development and occupancy.

****.**.090 Design.** Except as provided for in ****.**.040(A)(4) and (5)**, units affordable to very low, lower, or moderate income households shall be built on-site and be dispersed throughout the housing development wherever feasible. In addition, the number of bedrooms of the units affordable to very low, lower, or moderate income households shall be equivalent to the bedroom mix of the nonrestricted units of the housing development unless the county and developer agree within the Affordable Housing Agreement to an alternative mix. The developer may include a higher proportion of units affordable to very low, lower, or moderate income households with more bedrooms. The design and appearance of the units affordable to very low, lower, or moderate income households shall be compatible with the design of the total housing development.