

CHAPTER 130.31 – AFFORDABLE HOUSING DENSITY BONUS**Sections:**

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130.31.010 Content

As required by California Government Code Section 65915, this Chapter contains provisions to allow 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, this Chapter carries 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 the County that are not within the TRPA's jurisdictional area. (Ord. 4816, 2009)

130.31.020 Definitions

As used in this Chapter, the following words and terms shall have the meanings set forth below:

- 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 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 30 percent of the area median income for the County, adjusted for family size and updated annually. (See Health and Safety Code (HSC) Section 50105).
 - 2. **“Lower income household”** means a household that earns between 50 and 80 percent of the area median income for the County, adjusted for family size and updated annually. (See HSC Section 50079.5).

3. **“Moderate income household”** means a household that earns between 80 and 120 percent of area median income for the County, adjusted for family size and updated annually. (See HSC Section 50093).
- B. **“Density Bonus”** means a density increase over the otherwise allowable maximum residential density under the applicable General Plan designation and Zone District.
- C. **“Incentive” or “Concession”** represents any of the following:
 1. Reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum standards of the Building 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), or proposed by the applicant or the County that result in identifiable, financially sufficient and actual cost reductions.
- D. **“Qualifying housing development”** means a single project for five or more residential units constructed within the unincorporated area of the 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.
- E. **“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).

130.31.030 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 or more residential units, either for rent or for sale and where 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 130.31.040 (Bonuses, Incentives, and Concessions Allowed) below in this Chapter when he or she agrees to provide at least any one of the following:
 1. At least five percent of the total number of proposed units for very low income households;
 2. At least 10 percent of the total number of proposed units for lower income households;
 3. A senior citizen housing development;

4. At least 10 percent of the total number of proposed units in a condominium project, for persons and families of moderate income;
 5. The donation of land sufficient in size to allow development of at least 40 affordable housing units consistent with California Government Code Section 65915(h) and Subsection 130.31.040.B (Density Bonus for the Dedication of Land) below in this Chapter;
 6. The payment of a fee in lieu of providing affordable housing units as established in this Section and Subsection 130.31.040.D (Affordable Housing In-Lieu Fee) below in this Chapter.
- 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 that protects all citizens from discrimination on the basis of race, color, national origin, religion, sex, disability, or familial status, such as 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. “Total units” does not include units added by a density bonus in compliance with this Chapter or by any other local policy granting a greater density bonus.

130.31.040 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 for Reservation of Affordable Units.** The density bonus allowed by this Chapter shall consist of an increase in the number of dwelling units over the otherwise maximum allowable residential density under the applicable General Plan designation and zone. 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 Subsection 130.31.030.B (Eligibility for Bonus, Incentives, and/or Concessions) above in this Chapter. The applicant who requests a density bonus in compliance with this Subsection shall elect which bonus shall be awarded. The density bonus shall be awarded pursuant to the calculations and limitations provided in California Government Code Section 16915(g) for very low, lower, and moderate income units.
- B. **Density Bonus for the Dedication of Land.** When an applicant for a subdivision, parcel map, or other residential development project donates land to the County for the development of affordable housing, the applicant shall be entitled to a density bonus

consistent with and subject to the provisions of California Government Code Section 65915(h).

- C. **Incentives for Provisions of Child Day Care Centers.** When an applicant proposes to construct a housing development that conforms to Subsection 130.31.030.B (Eligibility for Bonus, Incentives, and/or Concessions) above in this Chapter, and includes a child day care center that will be located on the premises of, either as part of or adjacent to, the project, the County shall grant a density bonus or other incentive consistent with California Government Code Section 65915(i).
- D. **Affordable Housing In-Lieu Fee.** If the Board adopts a fee in lieu of providing the affordable housing units established by Section 130.31.030 (Eligibility for Bonus, Incentives, and/or Concessions) above in this Chapter, an applicant may choose to pay said fee in lieu of providing affordable housing.
1. 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.
 2. 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 Chapter.
- E. **Conversion of Market Rate Housing.** When an applicant for a qualifying housing development acquires existing market rate dwelling units and enforces price restrictions on the rental or sale of the existing market rate dwelling units in compliance with this Chapter, he/she shall be entitled to a 15 percent increase above the otherwise maximum allowable density under the applicable General Plan designation and zone. The project must be reviewed as to the appropriateness of the conversion from market rate to income restricted units to minimize neighborhood impacts. It may require design upgrades subject to a Design Review Permit (Section 130.52.030, Design Review Permit) in Article 5 (Planning Permit Processing) of this Title, for compliance with current standards and regulations.

130.31.050 Processing of Requests

- A. Requests for density bonuses, incentives, and/or concessions shall be made and evaluated through the County's existing permit processes where required, in compliance with Chapter 130.63 (Amendments and Zone Changes) in Article 6 (Zoning Ordinance Administration) of this Title, and Chapter 130.52 (Permit Requirements, Procedures, Decisions, and Appeals) in Article 5 (Planning Permit Processing) of this Title. Where no discretionary permits are otherwise required for a project, consideration of density bonuses, incentives, and/or concessions shall be made

through an Administrative Permit in compliance with Section 130.52.010 (Administrative Permit, Relief, or Waiver) in Article 5 (Planning Permit Processing) of this Title.

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 permit application and shall be reviewed by the Director. The Director shall notify the applicant within 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 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 appropriate review authority shall also require the following special findings:
 - (1) There are sufficient provisions to guarantee that units will remain affordable in the future, consistent with the requirements of Section 130.31.060 (Continued Availability of Affordability) above in this Chapter and the California Government Code Sections 65915(c) and 65915(h)(4).
 - (2) Adequate evidence exists to indicate that development of the subject property in compliance with a valid permit or entitlement will result in the provision of housing affordable to very low, lower, and moderate income households in a manner consistent with this Chapter.
 - (3) The number of dwelling units approved by the 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:
 - (1) 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
 - (2) The concession or incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5(d)(2), 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. (Ord. 4816, 2009)

130.31.060 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 of rent plus the standard County Housing Authority utility allowance, does not exceed 30 percent of the maximum monthly income limit for very low and low income households in the 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) of 35 percent of no greater than 120 percent 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 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 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 30 years.
- C. Moderate income condominium or planned development units approved and/or constructed in compliance with this Chapter shall remain affordable for at least 20 years.
1. If such units are sold within the 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 years for any of the purposes promoting home ownership, as described in Health and Safety Code Section 33334.2(e).
- D. 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 Subsections B and C above in this Section. 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 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.

130.31.070 Location of Bonus Units

Units affordable to very low, lower, or moderate income households constructed in compliance with this Chapter shall be approved under a single development application and be built within one-quarter mile of the boundary of the proposed housing development, unless the County and developer agree to an alternative site for development in the Affordable Housing Agreement.

130.31.080 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.

130.31.090 Design

Except as provided for in Section 130.31.040 (Bonuses, Incentives, and Concessions Allowed) above in this Chapter, 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.