

SECTION 15.7: DENSITY BONUS ORDINANCE

(Added by Ord. No. 3476, effective 7-30-2015)

PURPOSE

The specific purposes of the affordable housing density bonus and other incentives regulation are to:

- (a) Allow for density bonuses and additional incentives for affordable housing lower and moderate income households, for seniors and disabled persons, and for development that includes a childcare facility;
- (b) Implement the policies of the General Plan Housing Element to expand the provision of housing for lower and moderate income households, elderly residents and others with special housing needs; and
- (c) Establish requirements for resale and rental controls to ensure that units remain affordable for at least thirty (30) years or such other term as required by Tulare County, consistent with State and Federal law.

GENERAL PROVISIONS

- (a) State Law Governs. The provisions of this chapter shall be governed by the requirements of Government Code Section 65915, as amended. Where conflict occurs between the provisions of this chapter and State and Federal law, State and Federal law shall govern.
- (b) Land Use Compatibility. All affordable housing units shall be dispersed within market rate projects, whenever feasible. Affordable housing units within market rate projects shall be comparable with the design of market-rate units in appearance, use of materials, and finished quality. Building forms, materials and proportions that are compatible with the character of the surroundings shall be used.
- (c) Availability. Affordable housing units shall be constructed concurrently with, and made available for qualified occupants at the same time as the market-rate housing units within the same project unless both Tulare County and the developer agree to an alternative schedule for development.
- (d) Effect of Granting Density Bonus. The granting of a density bonus shall not, in and of itself, require a General Plan amendment, zoning change, or other discretionary "approval.
- (e) Income Levels. For purposes of determining income levels of households under this chapter, Tulare County shall use the income limits in Title 25, Section 6932 of the California Code of Regulations or other income limits adopted by Tulare County if the State department of Housing and Community Development fails to provide timely updates of the income limits in the California Code of Regulations.

APPLICATION REQUIREMENTS

An application for a density bonus, incentive, concession, waiver, modification, or revised parking standard pursuant to this chapter shall be submitted in conjunction with the project application and shall be processed concurrently with all other applications required for the project. The application shall be submitted on a form provided by Tulare County and shall include, at a minimum, the following information:

- (a) A site plan showing the total number of units, the number and location of the units dedicated and the number and location of the proposed density bonus units;
- (b) The level of affordability of the dedicated units;
- (c) A description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards and evidence demonstrating that the application of the subject standard or requirement would preclude construction of the project and that the waiver or modification is necessary to make development of the project financially feasible;
- (d) If a density bonus is requested for a land donation, the application shall show the location of the land to be dedicated; and,
- (e) If a density bonus is requested for construction of a child care facility, the application shall show the location and square footage of the proposed facility.

REVIEW

- (a) **Duration of Affordability.** All affordable housing units shall be kept affordable for a minimum period of thirty (30) years or such other terms approved by Tulare County, consistent with State and Federal law.
- (b) **Regulatory Agreement Required.** All affordable housing projects shall be subject to the approval of an agreement pursuant to conforming to the provisions of Sections 65864 to 65869 of the Government Code. The terms of the agreement shall be reviewed and revised as appropriate by the Planning Director, who shall formulate a recommendation to the decision making body for final approval. This agreement shall include, but is not limited to, the following:
 - (1) **Number of Units.** The total number of units approved for the projects, including the number of affordable housing units.
 - (2) **Target Units.** The location, unit sizes (in square feet) and number of bedrooms of the affordable housing units.
 - (3) **Household Income Group.** A description of the household income groups to be accommodated by the project and a calculation of the Affordable Sales Price.
 - (4) **Certification Procedures.** The party responsible for certifying sales prices or annual rental rates, and the process that will be used for certification.
 - (5) **Schedule.** A schedule for the completion and occupancy of the affordable housing units.
 - (6) **Required Term of Affordability.** Duration of affordability of the housing units. Provisions shall also cover resale control and deed restrictions on targeted housing units that are binding on property upon sale or transfer.
 - (7) **Expiration of Agreement.** Provisions covering the expiration of the agreement, including notice prior to conversion to market rate units and right of first refusal option for Tulare County and/or the distribution of accrued equity for for-sale units.
 - (8) **Remedies for Breach.** A description of the remedies for breach of the Agreement by either party.
 - (9) **Other Provisions.** Other provisions to ensure implementation and compliance with this chapter.

- (10) Condominium and Planned Developments. In the case of condominium and planned developments, the Regulatory Agreement shall provide for the following conditions governing the initial resale and use of affordable housing units:
 - a. Target units shall, upon initial sale, be sold to eligible Very Low, Lower, or Moderate Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents as defined by this Ordinance.
 - b. Target units shall be initially owner-occupied by eligible Very Low or Lower Income Households.
 - c. Upon resale, the seller of a target unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. Tulare County shall recapture its proportionate share of appreciation, which shall be used to promote home ownership opportunities. Tulare County's proportionate share shall be equal to the percentage by which the initial sale price to the targeted household was less than the fair market value of the dwelling unit at the time of initial sale.
- (11) Rental Housing Developments. In the case of rental housing developments, the Regulatory Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:
 - a. The rules and procedures for qualifying tenants, establishing affordable rent rates, filling vacancies, and maintaining Target Units for qualified tenants.
 - b. Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this chapter.
 - c. Provisions requiring owners to submit an annual report to Tulare County, which includes the name, address, and income of each person occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

STATE AFFORDABLE HOUSING DENSITY BONUS

- (a) Minimum Density Bonus and Composition of Qualifying Projects. Tulare County shall grant a density bonus in the following amounts over the otherwise allowable maximum residential density permitted by this Ordinance and the General Plan, and one (1) or more additional concessions or incentives, if the applicant applies for and proposes to construct any one (1) of the following:
 - (1) Lower Income Units. A density bonus of twenty (20) percent if ten (10) percent of the total units of a housing development are affordable to lower income households.
 - (2) Very Low Income Units. A density bonus of twenty (20) percent if five (5) percent of the total units of a housing development are affordable to very low income households.
 - (3) Senior Citizen Housing Development. A density bonus of twenty (20) percent if a housing development qualifies as a Senior Citizen Housing Development.
 - (4) Moderate Income Units in Condominium and Planned Use Developments. A density bonus of five (5) percent if ten (10) percent of the total dwelling units in a condominium project, are affordable to persons and families of moderate income.

- (b) **Additional Sliding Scale Density Bonus.** The number of units to which an applicant is entitled may exceed the percentage specified under the following provisions:
 - (1) **Lower Income Dwellings.** For each additional one (1) percent increase above ten (10) percent units affordable to lower income households, the density bonus shall be increased by one and one-half (1.5) percent up to a maximum density bonus of thirty-five (35) percent of the maximum allowable residential density for the site.
 - (2) **Very Low Income Dwellings.** For each additional one (1) percent increase above five (5) percent in the proportion of units affordable to very low income households, the density bonus shall be increased by two (2) and one half (2.5) percent, up to a maximum of thirty-five (35) percent of the maximum allowable residential density for the site.
 - (3) **Condominium and Planned Development Units.** For each additional one (1) percent increase above ten (10) percent 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 of the maximum allowable residential density for the site.
- (c) **Qualifying Projects – Number of Units.** The bonuses under Subsections (a) and (b) are applicable to residential projects of twenty (20) or more units, and senior housing projects of more than thirty-five (35) units.
- (d) **Calculation of Density Bonus Units.** When calculating the number of permitted density bonus units, all fractional units shall be rounded to the next higher whole number. The applicant who requests a density bonus for a project that meets two (2) or more of the eligibility requirements shall specify whether the bonus shall be awarded.
- (e) **Minimum Density Bonus and Composition of Qualifying Projects.** The density bonus shall not be included when determining the number of target units to be provided in a development project.
- (f) **Optional Density Bonus.** Tulare County may grant a proportionally lower density bonus and/or provide concessions and/or, Affordable Housing Concessions and Incentives, if an applicant agrees to construct a development containing less than the percentage of housing for lower or very low income households.

AFFORDABLE HOUSING CONCESSIONS AND INCENTIVES

- (a) **Number of Incentives or Concessions.** Tulare County will provide an applicant incentives and/or concessions as follows:
 - (1) One (1) 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; or
 - (2) One (1) incentive or concession for senior citizen housing developments; or
 - (3) Two (2) 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; or
 - (4) Three (3) 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.

- (5) The applicant who requests incentives or concessions for a mixed-income project shall specify whether the incentives or concessions shall be awarded on the basis of paragraph one (1), two (2), three (3), or four (4) of this section.
- (b) Proposal of Incentives and Findings. An applicant may propose specific incentives or concessions that would contribute significantly to the economic feasibility of providing affordable units pursuant to this chapter and State law. In addition to any increase in density to which an applicant is entitled, Tulare County shall grant one (1) or more incentives and/or concessions that an applicant requests, up to the maximum number of incentives and concessions, unless Tulare County makes a written finding that either:
- (1) The concession or incentive is not necessary in order to provide the proposed targeted units, or
 - (2) The concession or incentive would have a specific adverse impact that cannot be feasibly mitigated on public health and safety or the physical environment or any property that is listed in the California Register of Historical Resources.
 - (3) The applicant may propose and Tulare County may approve additional incentives and concessions for an eligible project that provides targeted units that meet two (2) or more of the eligibility requirements based on a written finding that the additional incentives or concessions are necessary in order to make the project economically feasible.
- (c) Types of Affordable Housing Incentives. Affordable housing incentives may consist of any combination of the items listed below:
- (1) Modification of Development Standards. Up to twenty (20) percent in modification of site development standards or zoning code requirements that exceed minimum building code standards and fire code standards, including, but not limited to:
 - a. Reduced minimum lot sizes and/or dimensions.
 - b. Reduced minimum building setbacks and building separation requirements.
 - c. Reduced minimum outdoor and/or private usable open space requirements.
 - d. Increased maximum lot coverage.
 - e. Increased maximum building height.
 - (2) Parking. Upon the applicant's request, the following maximum parking standards, inclusive of handicapped and guest parking, shall apply to the entire project. Further reductions in required parking may be requested as one (1) of the incentives allowed under Subsection (a).
 - a. One (1) on-site space for studios to one (1) bedroom units;
 - b. Two (2) on-site spaces for two (2) to three (3) bedroom units; and
 - c. Two and a half (2.5) on-site spaces for four (4) more bedroom units.
 - d. For purposes of this section, at the applicant's request, on-site parking may be provided through tandem parking or uncovered parking but not through on-street parking.
 - (3) Mixed Use Zoning. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial or other land uses will reduce the

cost of the housing development and such uses are compatible with the housing project and the surrounding area.

- (4) Other Incentives. Other regulatory incentives or concessions proposed by the developer or Tulare County that result in identifiable cost reductions or avoidance.
- (d) The concession or incentive shall not be contrary to state or federal law.
- (e) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to Tulare County. The applicant may elect to accept a lesser percentage of density bonus.
 - (1) For housing development, the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

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

Percentage 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	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

- (2) For senior housing units, the density bonus shall be 20 percent.
- (3) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.
- (f) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to Tulare County in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26

22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

- (2) This increase shall be in addition to any increase in density up to a maximum combined mandated density increase of 35 percent. All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of Tulare County to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:
- (A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.
 - (B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.
 - (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 designation, is appropriately zoned with appropriate development standards for development and is or will be served by adequate public facilities and infrastructure.
 - (D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that Tulare County may subject the proposed development to subsequent design review if the design is not reviewed by Tulare County prior to the time of transfer.
 - (E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability, which shall be recorded on the property at the time of the transfer.
 - (F) The land is transferred to Tulare County or to a housing developer approved by Tulare County. Tulare County may require the applicant to identify and transfer the land to the developer.
 - (G) The transferred land shall be within the boundary of the proposed development or, if Tulare County agrees, within one-quarter mile of the boundary of the proposed development.

- (H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.
- (g) (1) When an applicant proposes to construct a housing development and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, Tulare County shall grant either of the following:
 - (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 concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) Tulare County shall require, as a condition of approving the housing development that the following occur:
 - (A) 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.
 - (B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income.
- (3) Tulare County shall not 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) "Child care facility," as used in this section, 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.
- (h) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, approved by Tulare County and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.
 - (1) "Development standard" includes 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 residential development pursuant to the zoning ordinance, general plan element, specific plan, charter, or other law, policy, resolution, or regulation.
 - (2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range

and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

- (1) Upon the request of the developer, Tulare County shall require a vehicular parking ratio, inclusive of handicapped and guest parking that exceeds the following ratios:
 - (A) Zero to one bedroom: one onsite parking space.
 - (B) Two to three bedrooms: two onsite parking spaces.
 - (C) Four and more bedrooms: two and one-half parking spaces.
 - (2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.
 - (3) An applicant may request other parking incentives or concessions.
- (j) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income, or 15 percent of the total units of the proposed condominium project to lower income households, and agrees to pay for the reasonably necessary administrative costs, Tulare County shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. Tulare County may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.
 - (k) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.
 - (l) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require Tulare County to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the Tulare County might otherwise apply as conditions of conversion approval.
 - (m) An applicant for approval to convert apartments to a condominium project may submit to Tulare County a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. Tulare County shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. Tulare County shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.
 - (n) Nothing in this section shall be construed to require Tulare County to approve a proposal to convert apartments to condominiums.
 - (o) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were already provided.

- (1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.
- (2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the Tulare County general:
 - (A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.
 - (B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.
For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.
- (3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of Tulare County to make an application for development approvals for the development or redevelopment of a commercial or industrial project.
- (4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of Tulare County and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

STATE CHILDCARE FACILITY DENSITY BONUS

- (a) Basic Requirements. When an applicant proposes to construct a housing development that conforms to the requirements of the State Density Bonus law and includes a childcare facility other than a Family Day Care Home that will be located on the premises of, as part of, or adjacent to, the project, Tulare County shall grant either of the following:
 - (1) Additional Density Bonus. A density bonus of additional residential units equal in square footage to the amount of square feet of the childcare facility.
 - (2) Additional Concession or Incentive. An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.
- (b) Conditions of Approval. Tulare County shall require, as a condition of approving the housing development, that the following occur:
 - (1) Length of Operation. The childcare facility remains in operation for a period of time that is as long as, or longer than the length of time during which the affordable housing units shall remain affordable.
 - (2) Attending Children. The percentage of children of very low, low or moderate income households who attend the childcare facility shall be the same or greater than the percentage of dwelling units in the project that are required for households at each income level.
- (c) Exceptions. Tulare County shall not be required to provide a density bonus or concession for a childcare facility if it finds that, based upon substantial evidence, the community has adequate childcare facilities.

CHILD CARE FACILITY

- (a) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a child care resource and referral network or child care coordinator in order to qualify for the density bonus.
- (b) If the developer uses space allocated for child care facility purposes, for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by Tulare County. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by Tulare County. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by Tulare County into a special account to be used for child care services or child care facilities.
- (c) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, Tulare County shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.
- (d) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

RECAPTURE OF APPRECIATION

An applicant shall agree to, and Tulare County shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, are persons and families of moderate income, and that the units are offered at an affordable housing cost. Tulare County shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

- (a) Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. Tulare County shall recapture any initial subsidy, and its proportionate share of appreciation, which amount shall be used within five years that promote home ownership.
- (b) For purposes of this subdivision, Tulare County's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
- (c) For purposes of this subdivision, Tulare County's proportionate share of appreciation shall be equal to the ratio of Tulare County's initial subsidy to the fair market value of the home at the time of initial sale.