

ORDINANCE NO. 3627

AN ORDINANCE AMENDING ORDINANCE NO. 352, THE ZONING ORDINANCE OF TULARE COUNTY, PERTAINING TO SECTION 15.7 OF ORDINANCE NO. 352, THE ZONING ORDINANCE, BY AMENDING THE DENSITY BONUS ORDINANCE IN COMPLIANCE WITH GOVERNMENT CODE 65915-65918.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE DO ORDAIN AS FOLLOWS:

Section 1. Amended Density Bonus Ordinance as Section 15.7, to read as follows:

SECTION 15.7: DENSITY BONUS ORDINANCE

PURPOSE

The purpose of this Ordinance and the focus of this Chapter are to provide incentives to the private sector in order to assist with affordable housing development:

(A) This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low income, low income, senior citizen households, foster youth, disabled veterans, homeless or college students in accordance with State law (Government Code §65915).

If there are any conflicts between this Ordinance and Government Code § 65915, the Government Code shall prevail;

(B) The applicant may request density bonus(es) and other incentive(s) in return for agreeing to construct and sell or rent affordable housing pursuant to state law and as provided in this Chapter (Government Code §65915).

(C) A project proposing an affordable housing density bonus shall be subject to permit approval as set forth in this Chapter, except that:

(1) The purpose of the permit review shall be to evaluate the entire project with respect to its compliance with the provisions of this Chapter.

(2) The permit approval process does not include the discretion to limit or disallow the development bonus provided by this Chapter but does include the authority to approve or disapprove the overall project, or to approve or disapprove the project subject to conditions that do not affect the development bonus.

DEFINITIONS

- (A) **Affordable Rent.** Monthly housing expenses, including a reasonable allowance for utilities, for the rental of affordable units that are reserved for low income or very low income households, (income figures as published and periodically updated by the State Department of Housing and Community Development pursuant to Health & Safety Code §50105).
- (B) **Affordable Sales Price.** A sales price at which low income or very low income households can qualify for the purchase of affordable units, calculated on the basis of underwriting standards of mortgage financing available for the development.
- (C) **Childcare Facility.** Means a child daycare facility other than a family daycare home, including but not limited to, infant centers, preschools, extended daycare facilities and school age child care centers.
- (D) **Community Plan.** A statement of generalized land use patterns, policies and recommendations which carry out the goals and objectives of the County's communities.
- (E) **Density Bonus.** Means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the County. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable units exceeds the percentage established. See Density Bonus Chart. All calculations resulting in fractional numbers shall be rounded up to the next whole number.
- (F) **Density Bonus Housing Agreement.** A legally binding agreement between the developer and the County to ensure that the requirements of this Chapter are satisfied. The agreement, among other things, shall establish: the number of affordable units, their size, location, terms and conditions of affordability, and production schedule.
- (G) **Development Standard.** Development standards includes a site or construction condition, including but not limited to a height limitation, a setback requirement, a floor area ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, or other local condition law, policy, resolution or regulation.
- (H) **Disabled Veterans.** As defined in Section 18541 of the Government Code.
- (I) **Density Bonus Units.** Those residential units granted pursuant to this Chapter which exceed the base density for the development site.
- (J) **Foster Youth.** Foster Youth as defined by in Section 66025.9 of the Education Code.

(K) **Homeless Persons.** As defined in the McKinney-Vento Homeless Assistance Act (42 U.S.C. Section 11301 et seq).

(L) **Housing Cost.** The sum of actual or projected monthly payments for-sale affordable units: principal and interest on a mortgage loan; any loan insurance fees; property taxes and assessments; fire and casualty insurance; property maintenance and repairs; homeowner association fees; and reasonable allowance for utilities.

(M) **Housing Development.** Means a development project for five or more residential units, including mixed use developments,

(N) **Incentives.** Regulatory concessions specified in Government Code §65915 (d) to include, but not be limited to: the reduction of site development standards for County Zoning Ordinance requirements; approval of mixed-use zoning in conjunction with the housing development; or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a density bonus (see Section 0003).

(O) **Low Income Household.** Households with residents whose income does not exceed the low income limits applicable to Tulare County as published and periodically updated by the State Department of Housing and Community Development pursuant to State law (Health & Safety Code § 50079.5).

(1) **Low Income:** 60 percent of the area median income for Tulare County, adjusted for household size, multiplied by 30 percent and divided by 12.

(P) **Lower Income Students.** Students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter or letter of eligibility provided by the institution of higher education that the student is enrolled in or by the California Student Aid Commission that the student receives or is eligible for financial aid.

(Q) **Major Transit Stop.** Meaning as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(R) **Qualifying Senior Resident.** A person 62 years of age or older, or 55 years of age or older in a senior citizen housing development. Other persons eligible to reside in senior citizen housing according to Civil Code § 51.12 and §51.3.

(S) **Senior Citizen Housing Development.** A residential development constructed or substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units. A housing development consistent with the California Fair Employment and Housing Act (Government Code §12900 et seq., including § 12955.9 in particular), which has been “Housing that meets the standards for senior housing in Sections 51.2, 51.3, and 51.4 of the Civil Code, except to the extent that those standards violate the prohibition of familial status discrimination in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations designed to meet the physical and social needs of senior citizens”.

(T) **Student Housing Developments.** All units in the student housing developments will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible the developer shall, as a condition of receiving a certificate of occupancy to the County, that the developer has entered into an operating agreement or master lease with one or more institutions of higher education to occupy all units of the student housing with students from that institution.

(U) **Unit.** The term unit as used in this section means one rental bed and its pro rata share of associated common area facilities.

(V) **Urban Development Boundary.** The boundary established around designated, unincorporated communities and incorporated cities in Tulare County to serve as official urban planning areas as defined by the County’s urban boundaries element. It is recognized that the boundary provides an official definition of the ultimate interface between future urban and agricultural land uses.

(W) **Very Low Income Household.** Households with residents whose income does not exceed the very low income limits applicable to Tulare County as published and periodically updated by the State Department of Housing and Community Development pursuant to State law (Health & Safety Code §50105).

(X) **Very Low Income.** Fifty percent of the area median income for Tulare County, adjusted for household size, multiplied by 30 percent and divided by 12.

IMPLEMENTATION

Tulare County, in cooperation with the State and Federal governments, has the ability to influence the housing delivery system and implementation of housing programs. This Chapter provides implementation steps by which such goals can be realized.

(D) **Density Bonus:** The County shall grant either a Density Bonus, or a Density Bonus with Additional Incentive(s), as set forth in this Chapter, to an applicant or developer who agrees to provide one of the following:

- (1) At least 5 % of the housing units are restricted to very low income residents; or
- (2) At least 10% of the housing units are restricted to low income residents; or
- (3) At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents, as defined in Health & Safety Code §50093; or
- (4) 100% of the housing units (other than manager's units) are restricted to very low, lower or moderate income residents (with a maximum of 20% moderate); or
- (5) At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level, or
- (6) At least 20% of the housing units are for low income college students in housing dedicated for full time students at accredited colleges, or
- (7) The project donates at least one acre of land to the County for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing. The land is transferred to a housing developer approved by the local agency and subject to be deed restricted. The transferred land shall be within the proposed development or within ¼ mile of the boundary of the proposed development, or
- (8) When an applicant proposes to construct a housing development that conforms to this chapter includes a childcare facility located on the premises of, as part of, or adjacent to the project. An additional bonus density in an amount equal to the childcare facility and an additional incentive that contributes significantly to the economic feasibility of the construction of the facility. The childcare facility shall remain in operation during the duration of the projects affordability and that the facility shall serve the percentage of very low, low and moderate families served by the project.
- (9) The project is a senior citizen housing development (no affordable units required). The complete project provides housing for senior citizens as defined in Civil Code §51.3 and §51.12, or

(10) The project is a mobile home park age restricted to senior citizens (no affordable units required). Mobile home parks that have age requirements according to §798.76 or §799.5 of the Civil Code.

(E) **Density Bonus Amount:** The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level as shown in the Density Bonus Chart shown at the end of this Chapter.

(F) **Density Bonus and Incentive:** The County shall provide a Density Bonus and Incentive(s), for qualified housing developments, upon the written request of a developer.

(G) **Incentive Application Requirements:** An applicant may submit to the County a proposal for the specific incentives or concessions that the applicant requests and may request a meeting with the County. The County shall grant the concession or incentive requested by the applicant unless the County makes a written finding, based on 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 Health & Safety Code §50052.5.

(2) The concession or incentive would have a specific adverse impact (as defined in Government Code §65589.5 (2) (d)) upon public health and safety, or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method of satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and very low income households or contrary to law.

(H) **Number of Incentives:** In addition to the density bonus the County will provide one or more incentives to each project that qualifies for a density bonus (except market rate senior citizen projects with no affordable units, and land donated for very low income housing). The number of incentives is based on the percentage of affordable units in the project. The applicant shall receive the following number of incentives or concessions:

Table 1 Incentives Chart

No. of Incentives/Concessions	Very Low Income Percentage	Lower Income Percentage	Lower Income Student Housing	Moderate Income Percentage
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1	5%	10%	20%	10%
2	10%	17%	N/A	20%
3	15%	24%	N/A	30%
4	100% Low/Very Low/Mod (20% Moderate allowed)	100% Low/Very Low/Mod (20% Moderate allowed)	N/A	100% Low/Very Low/Mod (20% Moderate allowed)

I) **Other Forms of Assistance:** A development qualifying for a density bonus also receives additional forms of assistance.

(1) **Waiver or Reduction of Development Standards.** If County development standard would physically prevent the project from being built at the permitted density and with the granted incentives, the developer may propose to have those standards waived or reduced. The County is not permitted to apply any development standard which would physically preclude the construction of the project at its permitted density with the granted incentives. The County is not required to waive or reduce development standards that would cause a public health or safety problem, harm historical property or be contrary to law. The waiver or reduction of a development standard does not count as an incentive, and there is no limit on the number of development standards waivers that may be requested or granted. This may include setbacks, lot coverage, open space and building heights.

(2) **Maximum Parking Requirements.** Upon the developer's request the County may not require more than the following parking rations for a density bonus project:

Table 2 Maximum Parking Requirements

Studio	1 Space
One Bedroom	1 Space
Two Bedroom	1.5 Spaces
Three Bedroom	1.5 Spaces
Four Bedroom	2.5 Spaces

- (1) Special Parking Requirements. Lower parking ratios apply to specified projects:

Table 3 Special Parking Requirements

Rental/for sale projects with at least 11% very low income or 20% lower income units, within ½ mile of accessible major transit stop.	0.5 Spaces per unit
Rental projects 100% affordable to lower income, within ½ mile of accessible major transit stop.	0 Spaces per unit
Rental/for sale projects with at least 20% moderate income within ½ mile of accessible major transit stop.	0.5 Spaces per unit
Rental senior projects 100% affordable to lower income households with paratransit service or within ½ mile of accessible bus route (operating at least eight times per day).	0 Spaces per unit
Rental special needs projects 100% affordable to lower income households with paratransit service or within ½ mile of accessible bus route (operating at least eight times per day).	0 Spaces per unit
Rental supportive housing developments 100% lower income households.	0 Spaces per unit

- (2) Onsite spaces may be provided through tandem or uncovered parking, but not on-street parking. Requesting these standards does not count as an incentive. However, the developer may request further parking reductions as an incentive.

(J) Affordable Housing Restrictions:

Rental Units. Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. The incomes and rent restrictions must remain in place for a 55 year term for very low or lower income units.

Rents must be restricted as follows:

- (a) For very low income units, rents may not exceed 30% of 50% of the area median income for household size suitable for the unit.
- (b) For lower income units rents may not exceed 30% of 60% of the area median income for a household size suitable for the unit.

(c) In 100% affordable housing developments, the rent for at least 20% of the units must meet the rent standards of Health and Safety Code Section 50053, and the remaining units may instead meet Low Income Housing Tax Credit rent standards.

(d) Area median income is determined annual by regulation of the California Department of Housing and Community Development, based on median income regulations adopted by the U.S. Department of Housing and Urban Development.

(e) Rents must include a reasonable utility allowance.

(f) Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.

(2) For Sale Units. Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner fees, reasonable utilities allowance, insurance premiums, maintenance costs and space rent.

(a) For very low income units, rents may not exceed 30% of 50% of the area median income for household size suitable for the unit.

(b) For lower income units rents may not exceed 30% of 60% of the area median income for a household size suitable for the unit.

(c) For moderate income units, housing costs may not exceed 35 of 110% of the area median income for a household size suitable for the unit.

(d) Buyers must enter into an equity sharing agreement with the County, unless the sharing requirements conflict with the requirements of another public funding source or law. The equity sharing agreement does not restrict the resale price but requires the original owner to pay the County a portion of any appreciation received on resale.

(e) The County percentage of appreciation is the purchase price discount received by the original buy, plus any down payment assistance provided by the county.

(f) The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of appreciation (for example, if the original sales price is \$300,000, and the original fair market value is \$400,000, and there is no County down payment assistance, the County subsidy is \$100,000, and the County share of appreciation is 25%).

(g) The income and affordability requirements are not binding on resale purchase (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years.

DEVELOPMENT STANDARDS

The standards provided in this section apply to housing projects designed as developments eligible for a density bonus, or a density bonus and additional incentive(s).

(A) **Density Bonus and Other Incentives:** The developer of a project eligible under this section shall be granted a density bonus as calculated in this Chapter or other incentives of equivalent financial value based on land cost per dwelling unit as determined by the Assistant Director of Development Services. 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.

(B) **Concurrent Construction:** Affordable units shall be constructed concurrently with non-restricted units unless both the County and the developer/applicant agree within the density bonus housing agreement to an alternative schedule for development. Housing developments shall comply with all applicable development standards, except those which may be modified as provided by this Chapter.

(1) Affordable units should be built on-site wherever possible and, when practical, be dispersed within the housing development.

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.

(2) Where feasible, the number of bedrooms of the affordable units should be equivalent to the bedroom mix of the non-affordable [*market rate] units of the housing development; except that the developer may include a higher proportion of Affordable Units with more bedrooms.

(3) The design and appearance of the affordable units shall be compatible with the design of the total housing development.

C. **Location and Timing for Provision of Affordable Units:** Affordable housing units provided to qualify a project to receive a density bonus under this section need not be located within the same site as the bonus units, but they must be located within the same urban development boundary.

(1) The affordable housing units must be completed, and their final building inspection granted by the building official verifying completion of the structures and related improvements, before the building official shall grant final building inspection for the market rate units.

(2) Where the developer has posted a performance bond or entered into an alternative agreement ensuring provision of the affordable housing units, subject to approval by the Tulare County Counsel and the Assistant Director Development Services, said affordable units do not require final building inspection before the Building Official grants final inspection of market rate units.

APPLICATION REQUIREMENTS AND REVIEW

(A) An application shall be processed concurrently with any other application(s) required for the housing development. Final approval or disapproval of an application shall be made by the Planning Commission, with right of appeal to the Board of Supervisors, unless direct financial assistance is requested. The County shall not disapprove a housing development project affordable to low income households, or condition approval in a manner which renders the project infeasible for development of low income households, without certain findings in accordance with state law; Government Code §65589.5.

(B) An applicant/developer proposing a Housing development pursuant to this Chapter may submit a preliminary application prior to the submittal of any formal request for a housing development. Applicants are encouraged to schedule a hearing before the Site Plan Review committee to discuss and identify potential application issues, including prospective Incentives, pursuant to the requirements in Section 16.2 of the Tulare County Zoning Ordinance. A preliminary application shall contain all information required in Section 16.2, including the following information:

(1) A brief description of the proposed Housing development, including the total number of units, affordable units, and density bonus units proposed.

(2) The zoning and general plan designations and assessor's parcel number(s) of the project site.

(3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.

(4) If an Incentive(s) is requested, the application should describe why the Incentive(s) is necessary to provide the affordable units as defined in this Chapter.

(C) Within 90 days of receipt of the preliminary application, the County shall provide to an applicant/developer a letter which identifies project issues of concern, and the procedures for compliance with this Chapter.

(D) The Assistant Director of Development Services shall inform the applicant/developer that the requested incentive(s) shall be recommended for consideration with the proposed housing development, or that alternative or modified incentive(s) shall be recommended for consideration in lieu of the requested incentive(s). If alternative or modified Incentive(s) are recommended by the Assistant Director of Development Services, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested incentive(s).

DENSITY BONUS HOUSING AGREEMENT

(A) Applicants/Developers requesting a density bonus shall draft and agree to enter into a density bonus housing agreement with the County. The County may prepare and provide developers with a standard housing development agreement format for purposes of this ordinance.

(B) Following execution of the agreement by all parties, the completed density bonus housing agreement, or memorandum thereof, shall be recorded and the conditions filed and recorded on the parcel(s) designated for the construction of affordable units. The approval and recordation shall take place prior to final map approval, or where a map is not being processed, prior to issuance of building permits for such parcels or units. The density bonus housing agreement shall be binding to all future owners and successors in interest.

(C) The density bonus housing agreement shall include at least the following:

(1) The total number of units approved for the housing development, including the number of affordable units.

(2) A description of the household income group to be accommodated by the housing development, as outlined in Section 3 of this Chapter, and the standards for determining the corresponding affordable rent or affordable sales price and housing costs.

(3) The location, unit sizes (square feet) and number of bedrooms of affordable units.

- (4) Tenure of use restrictions for affordable units of at least 30 years, in accordance with section 4 of this Chapter.
- (5) A schedule for completion and occupancy of affordable units.
- (6) A description of the incentive(s) or equivalent financial incentives being provided by the County.
- (7) A description of remedies for breach of the agreement by either party (the County may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
- (8) Other provisions to ensure implementation and compliance with this Chapter.
- (D) In addition, the following types of transfers shall remain subject to the requirements of the County's loan and right of first refusal: transfer by gift; devise or inheritance to the owner's spouse; transfer to a surviving joint tenant; transfer to a spouse as part of divorce or dissolution proceedings; or acquisition in conjunction with marriage.
- (E) **Exception to resale restrictions:** When the fair market value of units proposed to qualify the project for a development bonus is equivalent to the affordable sales price determined above, no affordable housing agreement shall be required. Additionally, no affordable housing agreement shall be required for housing units purchased with mortgage financing provided through the USDA Rural Development Section 502 program.

DENSITY BONUS CHART

Affordable Unit Percentage	Very Low Income Density Bonus	Low Income Density Bonus	Moderate Income Density Bonus	Land Donation Density Bonus	Senior	Foster Youth/Disabled Vets/Homeless	College Students
5%	20%				20%		
6%	22.5%				20%		
7%	25%				20%		
8%	27.5%				20%		
9%	30%				20%		
10%	32.5%	20	5%	15%	20%	20%	

11%	35%	21.5	6%	16%	20%	20%	
12%	38.75%	23	7%	17%	20%	20%	
13%	42.5%	24.5	8%	18%	20%	20%	
14%	46.25%	26	9%	19%	20%	20%	
15%	50%	27.5	10%	20%	20%	20%	
16%	50%	29	11%	21%	20%	20%	
17%	50%	30.5	12%	22%	20%	20%	
18%	50%	32	13%	23%	20%	20%	
19%	50%	33.5	14%	24%	20%	20%	
20%	50%	35	15%	25%	20%	20%	35%
21%	50%	38.75	16%	26%	20%	20%	35%
22%	50%	42.5	17%	27%	20%	20%	35%
23%	50%	46.25	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%

41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100%	80%	80%	80%	35%	20%	20%	35%

Section 2. This Ordinance shall take effect thirty (30) days from the date of the passage hereof, or if published more than 15 days after the date of passage, then 30 days after publication, whichever is later, and, shall be published once in the Sun-Gazette, a newspaper printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 16th day of May 2023, at a regular meeting of said Board, duly and regularly convened on said day, by the following roll call vote:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO
AND TOWNSEND
NOES: NONE
ABSENT: NONE



Chair, Board of Supervisors



ATTEST: Jason T. Britt
County Administrative Officer/Clerk
Board of Supervisors

By: 
Deputy Clerk

Approved as to Form:



Deputy County Counsel
Matter No. 2023398