



LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

HEARING DATE: July 22, 2021

AGENDA ITEM # 4

Project Description

Applicant: County of San Bernardino Land Use Services Department

Community: Countywide

Location: Countywide

Project No: PMISC-2020-00059

Staff: Suzanne Peterson

Proposal: Development Code Amendment to update Chapter 83.03 (Affordable Housing Incentives – Density Bonus) to comply with updates to state law, to provide an additional density bonus option for properties zoned Multiple Residential (RM), and update density standards in Tables 82-9A, 82-9B, and 82-9C.

Newspaper Publication Date: July 11 2021

Report Prepared By: Suzanne Peterson

PROJECT DESCRIPTION

The proposal is an amendment to Title 8 of the San Bernardino County Code (Development Code), to update Chapter 83.03 (Affordable Housing Incentives – Density Bonus) to comply with updates to state law, to provide an additional density bonus option for properties zoned Multiple Residential (RM), and to update density standards in Tables 82-9A, 82-9B, and 82-9C to be consistent with the Countywide Plan and future zoning (Development Code Amendment).

BACKGROUND

State Legislation

In 2019, Assembly Bill 1763 (AB 1763) provided a higher density bonus and an additional incentive or concession for 100% affordable housing projects. AB 1763 also eliminated parking requirements for qualifying senior living, special needs, and supportive affordable housing projects. In 2020, Assembly Bill 2345 (AB 2345) further expanded density bonus law by increasing the maximum density bonuses allowed for eligible projects, lowering the percentages for low-income units required to qualify for additional incentives or concessions, and reducing parking requirements for two- and three-bedroom units. These bills became effective January 1, 2020, and January 1, 2021, respectively.

Countywide Plan

The Countywide Plan was adopted on October 27, 2020. The Policy Plan component of the Countywide Plan replaced the County's General Plan. The Policy Plan set forth broad Land Use Categories to provide guidance for land use patterns and future development in the unincorporated areas of the County. Each of the residential Land Use Categories has a density range listing a maximum density and, except for the Rural Living, a minimum density.

The current standards provided in the Development Code list a maximum density but do not provide a minimum density. The density and intensity ranges for each zone will be specified when the Development Code is updated, along with other proposed changes to make the Development Code consistent with the Countywide Plan. Some of these changes are being proposed in advance to support the Housing Element update.

Housing Element

The Housing Element identifies the County's existing and projected housing needs and sets forth goals, policies, programs and actions that are the foundation of the County's housing strategy. The state mandates that the Housing Element be updated as appropriate, but no less than every eight years. The County is in the process of updating the 6th cycle Housing Element for planning year 2021 – 2029. The Housing Element needs for this cycle may, in part, be satisfied through the proposed changes to the Development Code regulations and allowances regarding minimum density, avoiding significant rezoning to higher density in the future.

ANALYSIS OF PROPOSAL

Content of the Proposed Ordinance: The Development Code Amendment would be modifying two sections of the code – the densities listed in the residential development standards tables (Tables 82-9A, 82-9B, and 82-9C) and Chapter 83.03: Affordable Housing Incentives – Density Bonus. These proposed changes are characterized as follows:

- **State Mandated** – A majority of the proposed amendments are to provide consistency with the rules and regulations relating to density bonuses and other incentives for housing developments as recently amended by AB 1763 and AB 2345. Failure to adopt an ordinance making these changes does not relieve the County from complying with Sections 65915 – 65918 of the California Government Code. The proposed amendments are all within Chapter 83.03 (Affordable Housing Incentives – Density Bonus), and include:
 - Eligibility. Adding additional eligibility criteria for transitional foster youth, disabled veterans, homeless persons, lower income college students, and 100% affordable projects with no more than 20% for moderate-income households. (Section 83.03.030)
 - Density Bonus. Expand the density bonus scale and increase the density bonus up to 50% for projects that include at least 24% of units for low-income households or 15% of units for very low-income households. Provide a density bonus of up to 20% for transitional foster youth, disabled veterans,

and homeless persons. Provide a density bonus of up to 35% for low-income student housing. Provide a density bonus of up to 80 percent for 100% affordable housing projects with no more than 20% of units being for moderate-income households and no density controls for projects within one-half mile of a major transit stop. (Section 83.03.040)

- Incentives or Concessions. Allow an additional fourth incentive or concessions for a project that includes 100% of the units, including total units and density bonus units, for very low-, low-, and moderate-income households (with a maximum of 20 percent moderate). If the project is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or 33 feet. (Section 83.03.050)
 - Parking. Lower the default parking ratio for two- and three-bedroom units to 1.5 spaces per unit. Lower the parking ratio to 0.5 spaces per unit for for-sale or for-rent housing development, that includes at least 20% low-income units or at least 11% very low-income units that is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development. Eliminate the parking spaces for each unit (0 spaces per unit) when the project provides either paratransit service or has unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day for projects that are 100% affordable, for seniors, special needs or supportive housing. (Section 83.03.060)
- **Countywide Plan Consistency** – The proposed changes to Tables 82-9A, 82-9B, and 82-9C provide consistency with the Countywide Plan and are being included in advance of the comprehensive Development Code Update to support the Housing Element. These changes add a minimum density to match the density range listed in the Countywide Plan and the proposed Development Code update. The changes are summarized in the table below, describing the minimum number of units allowed through a subdivision or planning permit approval.

	Minimum number of units per acre		
	Rural Living (RL)	Single Residential (RS)	Multiple Residential (RM)
Valley Region	No minimum	No minimum	11 units per acre
Mountain Region	No minimum	No minimum	5 units per acre
Desert Region without water, sewer & paved roads	No minimum	No minimum	5 units per acre
Desert Region with water, sewer & paved roads	No minimum	No minimum	11 units per acre

- **New County Proposed Density Bonus** – In addition to state mandated changes, staff is proposing an additional density bonus within Chapter 83.03 (Affordable Housing Incentives – Density Bonus). The proposed County density bonus would

apply only to properties zoned Multiple Residential (RM) and projects with at least 20% of the proposed housing units for lower income households. The proposed County ordinance would increase the maximum density from 20 units per acre to 30 units per acre in the Valley region or the Desert region if the site is served by piped water, sewer, and paved roads; the maximum density would be increased from 20 units per acre to 25 units per acre in the remaining portions of the Desert region and the Mountain region. The increased maximum density is what would be used to calculate the density bonus for qualifying housing projects. The density bonus is then calculated as described in Chapter 83.03 (Affordable Housing Incentives – Density Bonus) for a project that either includes (1) at least 10% of proposed units are for lower income, (2) at least 5% of proposed units are for very low income, or (3) project is 100% affordable with no more than 20% being for moderate income.

- **Minor Clarifications** – Additional changes were made to provide clarification within the Chapter 83.03 (Affordable Housing Incentives – Density Bonus) to include an applicability section, clarify the County’s role in the density bonus administration, ensure the continued availability of the affordable units, and an additional footnote to the Development Standards Table.

ENVIRONMENTAL DETERMINATION

The Development Code Amendment is within the scope of the Countywide Plan Program Environmental Impact Report (PEIR) in terms of the potential environmental effects associated with the proposed changes to density requirements. The programmatic mitigation incorporated in the Countywide Plan PEIR will apply to subsequent development projects proposed in the future, with project-specific environmental review conducted when specific developments are proposed.

The Development Code Amendment is also exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (common sense exemption) of the CEQA Guidelines in terms of the density bonus update because it can be determined with certainty that the Development Code Amendment will not have a significant effect on the environment since the amendment consists of local implementation of density bonus requirements consistent with state law. It is also determined that the Development Code Amendment is exempt from CEQA pursuant to Section 15308 (actions by regulatory agencies for protection of the environment) because the updated density bonus regulations are intended to assure the enhancement or protection of the environment by combatting the current housing crisis, including the environmental harms caused by the housing crisis due to the lack of affordable housing, as declared by the State Legislature. By providing incentives for more affordable housing options the proposed amendment will decrease pressure to develop farmland, open space, and rural interface areas to build affordable housing, as well as decrease greenhouse gas emission caused from longer commutes to affordable homes far from growing job centers.

FINDINGS

The following findings and the evidence to support such findings must be made by the Planning Commission in its recommendation to the Board of Supervisors to approve the proposed Development Code Amendment:

1. The proposed ordinance amending the Development Code is consistent with the Countywide Plan and any applicable specific plan. The proposed ordinance will amend the Development Code in order to provide consistency with minimum density requirements and to match the density range listed in the Countywide Plan. The proposed ordinance will also ensure compliance with recent updates to state law regarding density bonus.
2. The proposed ordinance amending the Development Code would not be detrimental to the public interest, health, safety, convenience or welfare of the County. The proposed ordinance amending the Development Code is intended to ensure housing capacity needs are met and encourage the development of affordable and senior housing in the County.
3. The proposed ordinance amending the Development Code is internally consistent with other applicable provisions of the Development Code. The minor clarifications proposed with this Development Code Amendment provide consistency with housing density requirements and County administration of density bonus requests.
4. The proposed amendment is within the scope of the Countywide Plan Program Environmental Impact Report (PEIR) in terms of the potential environmental effects associated with the proposed changes to density requirements. The programmatic mitigation incorporated in the Countywide Plan PEIR will apply to subsequent development projects proposed in the future, with project-specific environmental review conducted when specific developments are proposed. The proposed amendment is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (common sense exemption) because it can be determined with certainty that implementation of the proposed ordinance would not have a significant effect on the environment since the proposed ordinance consists of the local implementation of density bonus requirements consistent with state law. In addition to the common sense exemption, the proposed amendment is exempt from CEQA pursuant to Section 15308 (actions by regulatory agencies for protection of the environment) of the CEQA Guidelines because the updated density bonus regulations are intended to assure the enhancement or protection of the environment by combatting the current housing crisis, including the environmental harms caused by the housing crisis, as declared by the State Legislature. Each exemption stands as a separate and independent basis for determining that this ordinance is not subject to CEQA.

RECOMMENDATION

That the Planning Commission take the following actions:

1. **DIRECT** staff to prepare an Ordinance amending Tables 82-9A, 82-9B, and 82-9C and Chapter 83.03 of Title 8 of the County Code as recommended in the staff report and as illustrated in Exhibit A as redline changes to the existing Development Code text.
2. **RECOMMEND** that the Board of Supervisors take the following action:
 - A. **FIND** that the Ordinance is exempt from CEQA pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines.
 - B. **ADOPT** the findings as contained in the staff report.
 - C. **ADOPT** the Ordinance amending Tables 82-9A, 82-9B, and 82-9C and Chapter 83.03 of Title 8 of the County Code related to residential density standards and affordable housing incentives.
 - D. **DIRECT** the Clerk of the Board to file a Notice of Exemption.

ATTACHMENTS

Exhibit A: Proposed Development Code Amendment (Redlined Version)

EXHIBIT A

Proposed Development Code Amendment (Redlined Version)

82.04.060 Residential Land Use Zoning District Site Planning and Building Standards

Subdivisions, new land uses and structures, and alterations to existing land uses and structures shall be designed, constructed, and established in compliance with the requirements in Tables 82-9A, 82-9B and 82-9C, in addition to the applicable standards (e.g., landscaping, parking and loading, etc.) in Division 3 (Countywide Development Standards) and Division 4 (Standards for Specific Land Uses and Activities).

**Table 82-9A
Residential Land Use Zoning District Development Standards
Valley Region**

Development Feature	Requirement by Land Use Zoning District		
	RL Rural Living	RS Single Residential	RM Multiple Residential
Density	<i>Maximum Housing density. The actual number of units allowed will be determined by the County through subdivision or planning permit approval, as applicable.</i>		
<u>Minimum density</u>	<u>No minimum</u>	<u>No minimum</u>	<u>11 units per acre⁽⁶⁾</u>
Maximum density ⁽⁵⁾	1 unit per 2.5 acres ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	4 units per acre ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	20 units per acre Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)
Setbacks	<i>Minimum setbacks required. See Chapter 83.02 for exceptions, reductions, and encroachments. See Division 5 for any setback requirements applicable to specific land uses.</i>		
Front	25 ft	25 ft ⁽²⁾	25 ft ⁽²⁾
Side - Street side	Local street - 15 ft Collector or wider - 25 ft	Local street - 15 ft Collector or wider - 25 ft	Local street - 15 ft Collector or wider - 25 ft
Side - Interior (each)	Lot 75 wide or less - 5 ft on one side, 10 ft on other; Other lots - 15 ft	5 ft on one side, 10 ft on other	5 ft on one side, 10 ft on other
Rear	15 ft	15 ft	15 ft
Lot coverage	<i>Maximum percentage of the total lot area that may be covered by structures and impervious surfaces.</i>		
Maximum coverage	20%	Lot less than 20,000 sf - Entire building envelope ⁽³⁾ Lot of 20,000 sf or larger - 40% ⁽⁴⁾	60%
Height limit	<i>Maximum allowed height of structures. See Section 83.02.040 (Height Limits and Exceptions) for height measurement requirements, and height limit exceptions.</i>		
Maximum height	35 ft	35 ft	45 ft
Accessory structures	See Chapter 84.01 (Accessory Structures and Uses).		
Infrastructure	See Chapter 83.09 (Infrastructure Improvement Standards)		
Parking	See Chapter 83.11 (Parking Regulations).		
Signs	See Chapter 83.13 (Sign Regulations)		

Notes: (1) Map suffix may modify.
 (2) A Final Map or Parcel Map may establish front yard setbacks of no less than 22 feet, provided that the average setback of all parcels in the subdivision is 25 feet.

- (3) Setback, Building Code, and Composite Development Plan requirements still apply.
- (4) The maximum lot coverage allowed in Chapter 82.06, Table 82-21A will prevail for allowed institutional land uses.
- (5) The maximum density may be greater when modified by Chapter 83.03 (Affordable Housing Incentives – Density Bonus)
- (6) If a parcel is adjacent to a lower density Land Use Zoning District and is not required to connect to sewer, property owners can subdivide/develop below the minimum density

**Table 82-9B
Residential Land Use Zoning District Development Standards
Mountain Region**

Development Feature	Requirement by Land Use Zoning District		
	RL Rural Living	RS Single Residential	RM Multiple Residential
Density	<i>Maximum housing density. The actual number of units allowed will be determined by the County through subdivision or planning permit approval, as applicable.</i>		
<u>Minimum density</u>	<u>No minimum</u>	<u>No minimum</u>	<u>5 units per acre⁽⁵⁾</u>
Maximum density ⁽⁴⁾	1 unit per 2.5 acres ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	4 units per acre ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	20 units per acre Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)
Setbacks	<i>Minimum setbacks required. See Chapters 83.02 for exceptions, reductions, and encroachments. See Division 5 for any setback requirements applicable to specific land uses.</i>		
Front	25 ft	Lot less than 14,000 sf =15 ft Lots 14,000 sf or larger=25 ft.	Lot less than 14,000 sf =15 ft Lots 14,000 sf or larger=25
Side - Street side	25 ft	15 ft	15 ft
Side - Interior (each)	20 ft	20% of lot width, need not exceed 15 ft ⁽²⁾	20% of lot width, need not exceed 15 ft ⁽²⁾
Rear	20 ft	15 ft	15 ft
Accessory structures	See Chapter 84.01 (Accessory Structures and Uses)		
Lot coverage	<i>Maximum percentage of the total lot area that may be covered by structures and impervious surfaces.</i>		
Maximum coverage	20%	40% ⁽³⁾	60%
Height limit	<i>Maximum allowed height of structures. See Section 83.02.040 (Height Limits and Exceptions) for height measurement requirements, and height limit exceptions.</i>		
Maximum height	35 ft	35 ft	45 ft
Accessory structures	See Chapter 84.01 (Accessory Structures and Uses).		
Infrastructure	See Chapter 83.09 (Infrastructure Improvement Standards)		
Parking	See Chapter 83.11 (Parking Regulations).		
Signs	See Chapter 83.13 (Sign Regulations)		

Notes:

- (1) Map suffix may modify.
- (2) The side yard setback standards in the Fire Safety Overlay (Chapter 82.13) shall prevail. The setback provisions of the small lot development standards (Chapter 84.22) shall not apply.
- (3) The maximum lot coverage allowed in Chapter 82.06, Table 82-21B will prevail for allowed institutional land uses.
- (4) The maximum density may be greater when modified by Chapter 83.03 (Affordable Housing Incentives – Density Bonus)
- (5) If a parcel is adjacent to a lower density Land Use Zoning District and is not required to connect to sewer, property owners can subdivide/develop below the minimum density.

Table 82-9C
Residential Land Use Zoning District Development Standards
Desert Region

Development Feature	Requirement by Land Use Zoning District		
	RL Rural Living	RS Single Residential	RM Multiple Residential
Density	<i>Maximum housing density. The actual number of units allowed will be determined by the County through subdivision or planning permit approval, as applicable.</i>		
<u>Minimum density</u>	<u>No minimum</u>	<u>No minimum</u>	<u>5 units per acre⁽⁸⁾⁽⁹⁾</u>
Maximum density ⁽⁷⁾	1 unit per 2.5 acres ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	4 units per acre ⁽¹⁾ Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)	20 units per acre Accessory dwellings as allowed by Chapter 84.01 (Accessory Structures and Uses)
Setbacks	<i>Minimum setbacks required. See Chapters 83.02 for exceptions, reductions, and encroachments. See Division 5 for any setback requirements applicable to specific land uses.</i>		
Front	25 ft	25 ft ⁽²⁾	25 ft ⁽²⁾
Side - Street side	25 ft	Local street - 15 ft ⁽³⁾ Collector or wider - 25 ft	Local street - 15 ft Collector or wider - 25 ft
Side - Interior (each)	Lot 75 wide or less - 5 ft on one side, 10 ft on other; Other lots - 15 ft	5 ft on one side, 10 ft on other ⁽⁴⁾	5 ft on one side, 10 ft on other
Rear	15 ft	15 ft	15 ft
Accessory structures	See Chapter 84.01 (Accessory Structures and Uses)		
Lot coverage	<i>Maximum percentage of the total lot area that may be covered by structures and impervious surfaces.</i>		
Maximum coverage	20%	Lot less than 20,000 sf - Entire building envelope ⁽⁵⁾ Lot of 20,000 sf or larger - 40% ⁽⁶⁾	60%
Height limit	<i>Maximum allowed height of structures. See Section 83.02.040 (Height Limits and Exceptions) for height measurement requirements, and height limit exceptions.</i>		
Maximum height	35 ft	35 ft	45 ft
Accessory structures	See Chapter 84.01 (Accessory Structures and Uses).		
Infrastructure	See Chapter 83.09 (Infrastructure Improvement Standards)		
Parking	See Chapter 83.11 (Parking Regulations).		
Signs	See Chapter 83.13 (Sign Regulations)		

Notes:

- (1) Map suffix may modify.
- (2) A Final Map or Parcel Map may establish front yard setbacks of no less than 22 feet, provided that the average setback of all parcels in the subdivision is 25 feet.
- (3) This setback shall be 25 feet in the Phelan-Pinon Hills Community Plan area.
- (4) This setback shall be 10 feet on both sides in the Phelan-Pinon Hills Community Plan area.

- (5) Setback, Building Code, and Composite Development Plan requirements still apply.
- (6) The maximum lot coverage allowed in Chapter 82.06, Table 82-21B will prevail for allowed institutional land uses.
- ~~(7) The maximum density may be greater when modified by Chapter 83.03 (Affordable Housing Incentives – Density Bonus)~~
- ~~(8) In areas served by piped water, sewer and paved roads, the minimum density shall be 11 units per acre~~
- ~~(9) If a parcel is adjacent to a lower density Land Use Zoning District and is not required to connect to sewer, property owners can subdivide/develop below the minimum density.~~

CHAPTER 83.03 AFFORDABLE HOUSING INCENTIVES - DENSITY BONUS

Sections:

83.03.010	Purpose
<u>83.03.020</u>	<u>Applicability</u>
83.03.03 <u>20</u>	Eligibility for Bonus, Incentives, or Concessions
83.03.04 <u>30</u>	Allowed Density Bonuses
83.03.05 <u>40</u>	Allowed Incentives or Concessions
83.03.06 <u>50</u>	Parking Requirements in Density Bonus Projects
83.03.07 <u>60</u>	Bonus and Incentives for Housing with Child Care Facilities
83.03.08 <u>70</u>	Continued Availability
83.03.09 <u>80</u>	Location and Type of Designated Units
83.03.10 <u>90</u>	Processing of Bonus Requests
83.03.11 <u>00</u>	Density Bonus Agreement
83.03.12 <u>10</u>	Control of Resale
83.03.13 <u>20</u>	Judicial Relief, Waiver of Standards

83.03.010 Purpose

~~As required by Government Code Section 65915, this Chapter offers density bonuses, and incentives or concessions for the development of housing that is affordable to the types of households and qualifying residents identified in Section 83.03.020 (Eligibility for Bonus, Incentives, or Concessions), below. This Chapter is intended to implement the requirements of the Government Code Section 65915 *et seq.* and the Housing Element of the General Policy Plan, and to increase the production of affordable and senior citizen housing.~~

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.020 Applicability

~~The provisions of this Chapter apply to a proposed housing development, as defined by Government Code Section 65915(i), as may be amended from time to time, that is eligible for a requested density bonus, incentives or concessions, or waiver or reduction of development standards and parking ratios described herein, and is applicable in all zones that allow residential as a primary use.~~

83.03.0320 Eligibility for Bonus, Incentives, or Concessions

In order to be eligible for a density bonus and other incentives or concessions as provided by this Chapter, a proposed housing development shall comply with the following requirements and shall satisfy all other applicable provisions of this Development Code, except as provided by Section 83.03.0540 (Allowed Incentives or Concessions).

(a) **Resident requirements.** A housing development proposed to qualify for a density bonus shall be designed and constructed so that it includes at least any one of the following:

(1) At least ~~ten~~10 percent of the total number of proposed units are for lower income households, as defined in Health and Safety Code Section 50079.5;

(2) At least ~~five~~5 percent of the total number of proposed units are for very low income households, as defined in Health and Safety Code Section 50105;

(3) The project is a senior citizen housing development as defined in Civil Code Sections 51.3 and 51.12, or is a mobile home park that limits residency based on age requirements for housing older persons in compliance with Civil Code Sections 798.76 or 799.5; ~~or~~

(4) At least ~~ten~~10 percent of the total dwelling units in a common interest development, as defined in Civil Code Section 4100~~1351~~, ~~are~~ for persons and families of moderate income, as defined in Health and Safety Code Section 50093, provided that all units in the development are offered to the public for purchase; ~~or~~

(5) At least 10 percent of the total units of a housing development for transitional foster youth, as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this paragraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units;

(6) At least 20 percent of the total units for lower income students in a student housing that meets the requirements of Government Code Section 65915(b)(1)(F); or

~~(4)~~(7) One hundred percent of all units in the development, including total units and density bonus units, but exclusive of a manager's unit or units, are for lower income households, as defined by Health and Safety Code Section 50079.5, except that up to 20 percent of the units in the development, including total units and density bonus units, may be for moderate-income households, as defined in Health and Safety Code Section 50053.

(b) **Applicant selection of basis for bonus.** For purposes of calculating the amount of the density bonus in compliance with Section 83.03.0~~430~~ (Allowed Density Bonuses), below, the applicant who requests a density bonus shall elect whether the bonus shall be awarded on the basis of Subsections (a)(1), (2), (3), ~~or~~ (4), (5), (6) or (7) above.

(c) **Bonus units shall not qualify a project.** A density bonus granted in compliance with Section 83.03.0~~430~~ (Allowed Density Bonuses), below, shall not be included when

determining the number of housing units that is equal to the percentages required by Subsection (a), above.

- (d) **Minimum project size to qualify for density bonus.** The density bonus provided by this Chapter shall be available only to a housing development of five or more dwelling units.
- (e) **Condominium conversion projects.** A condominium conversion project for which a density bonus is requested shall comply with the eligibility and other requirements in Government Code Section 65915.5.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0430 Allowed Density Bonuses

The Board shall determine the amount of a density bonus allowed in a housing development in compliance with this Section. For the purposes of this Chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density under the applicable Land Use Policy Plan designation and ~~land-use~~ zoning district as of the date of application by the applicant to the County.

- (a) **Density bonus.** A housing development that complies with the eligibility requirements in ~~Subsections 83.03.0320(a)(1), (2), (3), or (4),~~ (5), (6) or (7) shall be entitled to density bonuses as follows, unless a lesser percentage is proposed by the applicant.
 - (1) **Bonus for units for lower income households.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.0230(a)(1) (10 percent of units for lower income households) shall be entitled to a density bonus calculated as follows:

Percentage of Low-Income Units Proposed	Percentage of Density Bonus
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10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
<u>16</u>	<u>29</u>
17	30.5
18	32
19	33.5
20	35
<u>21</u>	<u>38.75</u>
<u>22</u>	<u>42.5</u>
<u>23</u>	<u>46.25</u>
<u>24</u>	<u>50</u>

- (2) **Bonus for units for very low-income households.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.03~~20~~(a)(2) (5five percent of units for very low-income households) shall be entitled to a density bonus calculated as follows:

Percentage of Very Low-Income Units Proposed	Percentage of Density Bonus
--	-----------------------------

5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
<u>12</u>	<u>38.75</u>
<u>13</u>	<u>42.5</u>
<u>14</u>	<u>46.25</u>
<u>15</u>	<u>50</u>

- (3) **Bonus for senior citizen development.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.0320(a)(3) (senior citizen housing development or mobile home park) shall be entitled to a density bonus of 20 percent of the number of senior housing units.
- (4) **Bonus for transitional foster youth, disabled veterans, or homeless persons.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.030(a)(5) (transitional foster youth, disabled veterans, or homeless persons) shall be entitled to a density bonus of 20 percent of the number of the type of units giving rise to a density bonus.
- (5) **Bonus for student housing development.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.030(a)(6) (lower income students in a student housing development) shall be entitled to a density bonus of 35 percent of the student housing units.
- (6) **Bonus for 100% affordable housing development.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.030(a)(7) (100 percent of all units in development affordable with up to 20 percent moderate) shall be entitled to a density bonus of 80 percent of the number of units for lower income households, except if the housing development is located within one-half mile of a major transit stop then no maximum density controls shall be applied.
- (74) **Bonus for moderate-income units in common interest development.** A housing development that is eligible for a bonus in compliance with the criteria in Section 83.03.0230(a)(4) (10 percent of units in a common interest development for persons and families of moderate income) shall be entitled to a density bonus calculated as follows:

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

Percentage of Moderate-Income Units Proposed	Percentage of Density Bonus
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
<u>41</u>	<u>38.75</u>
<u>42</u>	<u>42.5</u>
<u>43</u>	<u>46.25</u>
<u>44</u>	<u>50</u>

(85) Density bonus for land donation. When an applicant for a ~~Tentative~~**Final** Map, Parcel Map, or other residential development approval donates land to the County in compliance with this Subsection, the applicant shall be entitled to a density bonus for the entire development, as follows; provided that nothing in this Subsection shall be construed to affect the authority of the County to require a developer to donate land as a condition of development.

(A) Basic bonus. The applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable ~~Land Use Policy~~ Plan land use designation and ~~land use~~-zoning district for the entire development, and an additional increase as follows.

Percentage of Very Low-Income Units Proposed	Percentage of 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

(B) **Increased bonus.** The increase identified in the table above shall be in addition to any increase in density required by Subsections (a)(1) through (a)(74), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required in compliance with this Subsection (a)(85), as well as the bonuses provided by Subsections (a)(1) through (a)(74).

(C) **Eligibility for increased bonus.** An applicant shall be eligible for the increased density bonus provided by this Subsection if all of the following conditions are met:

(I) The applicant donates and transfers the land no later than the date of approval of the Final Map, Parcel Map, or residential development application.

(II) 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.

(III) 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 ~~Land Use~~

Policy Plan land use designation; is appropriately zoned for development as affordable housing; and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.

- (IV) No later than the date of approval of the Final Map, Parcel Map, or of the residential development, 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, except that the County may subject the proposed development to subsequent design review to the extent authorized by Government Code Section 65583.2(i) if the design is not reviewed by the County before the time of transfer.
- (V) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 83.03.0870 (Continued Availability), which shall be recorded on the property at the time of dedication.
- (VI) The land is transferred to the County or to a housing developer approved by the County. The County may require the applicant to identify and transfer the land to the approved housing developer.
- (VII) The transferred land shall be within the boundary of the proposed development or, if the County agrees, within one-quarter mile of the boundary of the proposed development.

(VIII) 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.

~~(b) **Greater or lesser bonuses.** The County may choose to grant a density bonus greater than provided by this Section for a development that meets the requirements of this Section, or grant a proportionately lower density bonus than required by this Section for a development that does not comply with the requirements of this Section.~~

(be) Density bonus calculations. The calculation of a density bonus in compliance with this Section that results in fractional units shall be rounded up to the next whole number, as required by State law. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels.

(c) **Additional County density bonus.** When a project restricts at least 20% of proposed housing units for lower income households, as defined in Health and Safety Code Section 50079.5, the County grants an additional density bonus for properties zoned Multiple Residential. The additional County density bonus for such projects shall be 10

units per acre in the Valley region, or Desert region when served by piped water, sewer, and paved roads; and 5 units per acre in the Mountain and remaining Desert regions. The resulting maximum density for such projects shall be 30 units per acre in the Valley region, or Desert region when served by piped water, sewer, and paved roads; and 25 units per acre in the Mountain and remaining Desert region. These are the maximum densities that shall be used to calculate density bonus prescribed by state law and outlined in Sections 83.03.030(a)(1), 83.03.030(a)(2), and 83.03.030(a)(7).

- (d) **Requirements for amendments or discretionary approval.** The granting of a density bonus shall not be interpreted, in and of itself, to require a ~~General Policy~~ Plan amendment, ~~Land Use Plan~~ zoning amendment, or other discretionary approval.
- (e) **Location of bonus units.** The developer may locate density bonus units in the housing project in other than the areas where the units for the lower income households are located.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0540 Allowed Incentives or Concessions

- (a) **Applicant request and County approval.**

~~(1)~~—An applicant for a density bonus in compliance with this Chapter may submit to the County a proposal for the specific incentives or concessions listed in Subsection (c) (Type of incentives), below, that the applicant requests in compliance with this Section, and may request a meeting with the Director. The applicant may file a request either before filing an application for County approval of a proposed project or concurrently with an application for project approval. The Board shall grant an incentive or concession request that complies with this Section unless the Board makes either of the following findings in writing, based upon substantial evidence:

~~(A)~~—~~(1)~~The incentive or concession ~~is~~ does not result in identifiable and actual cost reductions, consistent with Subsection 83.03.050(c) below, required to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents for the targeted units to be set as specified in ~~Subsection 83.03.0870(b)~~ (Unit cost requirements); ~~or~~

~~(B)~~—~~(2)~~ The incentive or concession would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment, or on any real property 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 unaffordable to low- and moderate-income households; or;

~~(3) The incentive or concession would be contrary to state or federal law.~~
~~(2) The applicant shall show that a waiver or modification of development standards is necessary to make the housing units economically feasible.~~

(b) **Number of incentives or concessions.** The applicant shall receive the following number of incentives or concessions.

(1) **One incentive or concession.** One incentive or concession for a project that includes at least 10 percent of the total units for lower income households, at least ~~five~~5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(2) **Two incentives or concessions.** Two incentives or concessions for a project that includes at least ~~20-17~~ percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(3) **Three incentives or concessions.** Three incentives or concessions for a project that includes at least ~~30-24~~ percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(4) **Four incentives or concessions.** Four incentives or concessions for a project that includes 100 percent of the units, including total units and density bonus units, for very low, low, and moderate income households (with a maximum of 20 percent moderate). If the project is located within one-half mile of a major transit stop, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(c) **Type of incentives or concessions.** For the purposes of this Chapter, concession or incentive means any of the following:

(1) A reduction in the site development standards of this Development Code (e.g., site coverage limitations, setbacks, reduced parcel sizes, and/or parking requirements (see also Section 83.03.0~~650~~ [Parking Requirements in Density Bonus Projects]), or a modification of architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission in compliance with Health and Safety Code Section 18901 *et seq.*, that would otherwise be required, that results in identifiable, financially sufficient, and actual cost reductions;

(2) Approval of mixed-use land uses not otherwise allowed by this Development Code in conjunction with the housing development, if nonresidential land uses will reduce the cost of the housing development, and the nonresidential land uses are

compatible with the housing project and the existing or planned development in the area where the project will be located; and/or

- (3) Other regulatory incentives or concessions proposed by the applicant or the County that will result in identifiable, financially sufficient, and actual cost reductions to provide for affordable housing costs.; ~~and/or~~

- ~~(4) In its sole and absolute discretion, a direct financial contribution granted by the Board, including writing down land costs, subsidizing the cost of construction, or participating in the cost of infrastructure.~~

- (d) **Effect of incentive or concession.** The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Policy Plan amendment, Land Use Plan zoning amendment, or other discretionary approval. In its sole and absolute discretion, a direct financial contribution granted by the Board, including writing-down land costs, subsidizing the cost of construction, or participating in the cost of infrastructure.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0650 Parking Requirements in Density Bonus Projects

- (a) **Applicability.** This Section applies to a development that meets the requirements of Section 83.03.0320 (Eligibility for Density Bonus, Incentives, and Concessions), above, but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this Section in compliance with Section 83.03.0540 (Allowed Concessions and Incentives), above. A request pursuant to this section shall neither reduce nor increase the number or incentives or concessions to which the applicant is entitled.

- (b) **Number of parking spaces required.**

- (1) Maximum parking requirements. Except as provided by Section 83.03.060(b)(2) (Special parking requirements), ~~At~~ the request of the applicant, the County shall not require ~~at the following~~ vehicular parking ratios for a project that complies with the requirements of Section 83.03.0320 (Eligibility for Density Bonus, Incentives, and Concessions), above, inclusive of parking for the disabled and guest parking, that exceeds the following ratios.

- (A) Zero to one bedroom: One on-site parking space per unit.

- (B) Two to three bedrooms: One and one-half ~~Two~~ on-site parking spaces per unit.

- (C) Four and more bedrooms: Two and one-half on-site parking spaces per unit.

(2) Special parking requirements. Notwithstanding Section 83.03.060(b)(1) (Maximum parking requirements), lower parking ratios apply to the following specified projects.

(A) For sale or for rent housing development, that includes at least 20 percent low-income units or at least 11 percent very low-income units that is located within one-half mile of a major transit stop, and there is unobstructed access to the major transit stop from the development: 0.5 spaces per unit.

(B) For-rent housing development, 100 percent affordable to lower income, located within one-half mile of a major transit stop and there is unobstructed access to the major transit stop from the development: 0 spaces per unit.

(C) For-rent housing development for individuals who are 62 years of age or older, 100 percent affordable to lower income, and the development has either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day: 0 spaces per unit.

(D) For-rent special needs housing development (as defined in Health and Safety Code Section 51312), 100 percent affordable to lower income, shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day: 0 spaces per unit.

(E) For-rent supportive housing development (as defined in Health and Safety Code Section 50675.14), 100 percent affordable to lower income, shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day: 0 spaces per unit.

(c) Calculation of parking. 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.

(de) Location of parking. For purposes of this Section, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0760 Bonus and Incentives for Housing with Child Care Facilities

A housing development that complies with the resident and project size requirements of Subsections 83.03.0320 (Eligibility for Bonus, Incentives, or Concessions)(a) and (b), above, and also includes as part of that development a child care facility other than a ~~large or small~~ family day care home, that will be located on the site of, as part of, or adjacent to the development, shall be subject to the following additional bonus, incentives, and requirements.

(a) **Additional bonus and incentives.** The County shall grant a housing development that includes a child-care facility in compliance with this Section either of the following:

- (1) An additional density bonus that is an amount of floor area in square feet of residential space that is equal to or greater than the floor area of the child-care facility; or
- (2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child-care facility.

(b) **Requirements to qualify for additional bonus and incentives.**

- (1) The County shall require, as a condition of approving the housing development, that to 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 in compliance with Section 83.03.0870 (Continued Availability), below; and
 - (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 in compliance with ~~Sub~~section 83.03.0320(a) (Eligibility for Bonus, Incentives, or Concessions Resident requirements), above.
- (2) The County shall not be required to provide a density bonus or concession for a child-care facility in compliance with this Section if it finds, based upon substantial evidence, that the community has adequate child-care facilities.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0870 Continued Availability

The units that qualified the housing development for a density bonus and other incentives and concessions shall continue to be available as affordable units in compliance with the following requirements, as required by Government Code Section 65915(c). See also Section 83.03.1240 (Control of Resale).

(a) **Duration of affordability.** The applicant shall agree to, and the County shall ensure, the ~~continued availability of the units that qualified the housing development for a density bonus and other incentives and concessions, as follows.~~

~~(1) Low-, and very low-income units. The~~ continued affordability of all low- and very low-income qualifying units shall be maintained for ~~30~~55 years, or a longer time if required by the construction or mortgage financing assistance program, mortgage insurance program or rental subsidy program.

~~(2) Moderate income units in common interest development. The continued availability of moderate income units in a common interest development shall be maintained for a minimum of 10 years.~~

(b) Unit cost requirements. The rents ~~and owner-occupied costs~~ charged for the housing units in the development that qualify the project for a density bonus and other incentives and concessions, shall not exceed the following amounts during the period of continued availability required by this Section:

(1) Lower income units. ~~Except as provided below in Subsection 83.03.080(b)(2), R~~rents for the lower income density bonus units shall be set at an affordable rent as defined in Health and Safety Code Section 50053~~;~~ ~~and~~

(2) For housing developments meeting the criteria of Subsection 83.03.030(a)(7), rents for all units in the development, including both base density and density bonus units, shall be as follows:

(A) The rent for at least 20 percent of the units in the development shall be set at an affordable rent, as defined in Health and Safety Code Section 50053.

(B) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

~~(2) Owner-occupied units. Owner-occupied units shall be available at an affordable housing cost as defined in Health and Safety Code Section 50052.5.~~

(c) Occupancy and resale of moderate-income common interest development units.

An applicant shall agree to, and the County shall ensure that the initial occupant of moderate income units that are directly related to the receipt of the density bonus in a common interest development as defined in Civil Code Section 1351, are persons and families of moderate income, as defined in Health and Safety Code Section 50093, and that the units are offered at an affordable housing cost, as defined in Health and Safety Code Section 50052.5. The County shall enforce an equity sharing agreement unless it is in conflict with the requirements of another public funding source or law. The following requirements apply to the equity sharing agreement.

(1) 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.

(2) The County shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within ~~five~~three years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership. For the purposes of this Section:

(A) The 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; and

(B) The County's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.0980 Location and Type of Designated Units

(a) **Location/dispersal of units.** As required by the Board in compliance with Section 83.03.1090 (Processing of Bonus Requests), below, designated units shall be reasonably dispersed throughout the project where feasible, shall contain on average the same number of bedrooms as the non-designated units in the project, and shall be compatible with the design or use of remaining units in terms of appearance, materials, and finished quality.

(b) **Phasing.** If a project is to be phased, the density bonus units shall be phased in the same proportion as the non-density bonus units, or phased in another sequence acceptable to the County.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.10090 Processing of Bonus Requests

~~(a) —~~**Permit requirement.** A request for a density bonus and other incentives and concessions shall be evaluated and decided through Conditional Use Permit approval in compliance with Chapter 85.06 (Conditional Use Permits/Minor Use Permits); provided, the decision of the Commission on a Conditional Use Permit application shall be a recommendation to the Board, and the density bonus and other incentives and concessions shall be approved or denied only by the Board.

~~(b) —~~**Findings for approval.** ~~In addition to the findings required by Section 83.72.060 for the approval of a Conditional Use Permit, the approval of a density bonus and other incentives and concessions shall require that the review authority first make all of the following additional findings:~~

- ~~(1) The residential development will be consistent with the General Plan, except as provided by this Chapter for density bonuses, and other incentives and concessions;~~
- ~~(2) The approved number of dwellings can be accommodated by existing and planned infrastructure capacities;~~
- ~~(3) Adequate evidence exists to indicate that the project will provide affordable housing in a manner consistent with the purpose and intent of this Chapter; and~~
- ~~(4) There are sufficient provisions to guarantee that the units will remain affordable for the required time period.~~

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.1100 Density Bonus Agreement

- (a) Agreement required.** An applicant requesting a density bonus shall agree to enter into a density bonus agreement (referred to as the "agreement") with the County in the County's standard form of agreement.
- (b) Agreement provisions.**
 - (1) Project information.** The agreement shall include at least the following information about the project:
 - (A) The total number of units approved for the housing development, including the number of designated dwelling units;
 - (B) A description of the household income group to be accommodated by the housing development, and the standards and methodology for determining the corresponding affordable rent or affordable sales price and housing cost consistent with HUD Guidelines;
 - (C) The marketing plan for the affordable units;
 - (D) The location, unit sizes (square feet), and number of bedrooms of the designated dwelling units;
 - (E) Tenure of the use restrictions for designated dwelling units of the time periods required by Section 83.03.0870 (Continued Availability);
 - (F) A schedule for completion and occupancy of the designated dwelling units;

- (G) A description of the additional incentives and concessions being provided by the County;
 - (H) A description of the remedies for breach of the agreement by the owners, developers, and/or successors-in-interest of the project; and
 - (I) Other provisions to ensure successful implementation and compliance with this Chapter.
- (2) **Minimum requirements.** The agreement shall provide, at minimum, that:
- (A) The developer shall give the County the continuing right-of-first-refusal to lease or purchase any or all of the designated dwelling units at the appraised value;
 - (B) The deeds to the designated dwelling units shall contain a covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for designated units without the written approval of the County;
 - (C) When providing the written approval, the County shall confirm that the price (rent or sale) of the designated dwelling unit is consistent with the limits established for low and very low-income households, as published by HUD;
 - (D) The County shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households;
 - (E) Applicable deed restrictions, in a form satisfactory to the County Counsel, shall contain provisions for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the Certificate of Occupancy;
 - (F) In any action taken to enforce compliance with the deed restrictions, the County Counsel shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the County's costs of action including legal services; and
 - (G) Compliance with the agreement will be monitored and enforced in compliance with the measures included in the agreement.

(3) **For-sale housing conditions.** In the case of a for-sale housing development, the agreement shall provide for the following conditions governing the initial sale and use of designated dwelling units during the applicable restriction period:

- (A) Designated dwelling units shall be owner-occupied by eligible households, or by qualified residents in the case of senior housing; and
- (B) The initial purchaser of each designated dwelling unit shall execute an instrument or agreement approved by the County which:
 - (I) Restricts the sale of the unit in compliance with [Section 83.03.120 \(Control of Resale\)](#) of this Chapter, or other applicable County policy or ordinance, during the applicable use restriction period;
 - (II) Contains provisions as the County may require to ensure continued compliance with this Chapter and State law; and
 - (III) Shall be recorded against the parcel containing the designated dwelling unit.

(4) **Rental housing conditions.** In the case of a rental housing development, the agreement shall provide for the following conditions governing the use of designated dwelling units during the applicable restriction period:

- (A) The rules and procedures for qualifying tenants, establishing affordable rent, filling vacancies, and maintaining the designated dwelling units for qualified tenants;
- (B) Provisions requiring owners to annually verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter;
- (C) Provisions requiring owners to submit an annual report to the County, which includes the name, address, and income of each person occupying the designated dwelling units, and which identifies the bedroom size and monthly rent or cost of each unit; and
- (D) The applicable use restriction period shall comply with the time limits for continued availability in [Section 83.03.0780](#) (Continued Availability), above.

(c) **Execution of agreement.**

- (1) Following Board approval of the agreement, and execution of the agreement by all parties, the County shall record the completed agreement on the parcels designated for the construction of designated dwelling units, at the County Recorder's Office.

- (2) The approval and recordation shall take place at the same time as the Final Map or, where a map is not being processed, before issuance of Building Permits for the designated dwelling units.
- (3) The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.1210 Control of Resale

In order to maintain the availability of for-sale affordable housing units constructed in compliance with this Chapter, the following resale conditions shall apply.

- (a) **Limits on resale price.** The price received by the seller of an affordable unit shall be limited to the purchase price plus an increase based on the Consumer Price Index, an amount consistent with the increase in the median income since the date of purchase, or the fair market value, whichever is less. Before offering an affordable housing unit for sale, the seller shall provide written notice to the County of their intent to sell. The notice shall be provided by certified mail to the Director.
- (b) **Units to be offered to the County.** Home ownership affordable units constructed, offered for sale, or sold under the requirements of this Section shall be offered to the County or its assignee for a period of at least 90 days from the date of the notice of intent to sell is delivered to the County by the first purchaser or subsequent purchasers. Home ownership affordable units shall be sold and resold from the date of the original sale only to households as determined to be eligible for affordable units by the County in compliance with this Section. The seller shall not levy or charge any additional fees nor shall any "finders fee" or other monetary consideration be allowed other than customary real estate commissions and closing costs.
- (c) **Declaration of restrictions.** The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of the affordable ownership unit a declaration of restrictions provided by the County, stating the restrictions imposed in compliance with this Section. The grant deed shall afford the grantor and the County the right to enforce the declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions required by this Section.
- (d) **County to monitor resale of units.** The County shall monitor the resale of ownership affordable units. The County or its designee shall have a 90-day option to commence purchase of ownership affordable units after the owner gives notification of intent to sell. Any abuse in the resale provisions shall be referred to the County for appropriate action.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)

83.03.1320 Judicial Relief, Waiver of Standards

- (a) **Judicial relief.** As provided by Government Code Section 65915(d)(3), the applicant may initiate judicial proceedings if the County refuses to grant a requested density bonus, incentive, or concession.
- (b) **Waiver of standards preventing the use of bonuses, incentives, or concessions.**
 - (1) As required by Government Code Section 65915(e), the County will not apply a development standard that will have the effect of precluding the construction of a development meeting the criteria of Subsection 83.03.0230(a) (Resident requirements), above, at the densities or with the concessions or incentives allowed by this Chapter.
 - (2) An applicant may submit to the County a proposal for the waiver or reduction of development and zoning standards that would otherwise inhibit the utilization of a density bonus on a specific site, including minimum parcel size, side setbacks, and placement of public works improvements.
 - (3) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.
 - (4) A proposal of the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 83.03.050 (Allowed Incentives or Concessions).
- (c) **County exemption.** Notwithstanding the provisions of Subsections (a) and (b), above, nothing in this Section shall be interpreted to require the County to:
 - (1) Grant a density bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction would have a specific, adverse impact, as defined in Government Code Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; or
 - (2) Grant a density bonus, incentive, or concession, or waive or reduce development standards, if the bonus, incentive, concession, waiver, or reduction would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

Adopted Ordinance 4011 (2007); Amended Ordinance 4067 (2009)