

ORDINANCE NO. _____

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA**

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**AN ORDINANCE REPEALING SECTIONS 7900 – 7911 OF THE COUNTY
ORDINANCE CODE (ZONING REGULATIONS) AND ADOPTING A NEW CHAPTER
22.6 OF THE ZONING REGULATIONS TO UPDATE THE DENSITY BONUS
PROGRAM, AS REQUIRED BY STATE LAW**

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows

SECTION 1. Findings. The Board of Supervisors of the County of San Mateo
("County") hereby finds and declares as follows:

WHEREAS, the County of San Mateo in 1993 adopted an ordinance
implementing California's State Density Bonus Law, Government Code Sections 65915
et seq; and

WHEREAS, that implementing ordinance is known as the County Density Bonus
Ordinance, numbered as Sections 7900 – 7911 of the County Ordinance Code; and

WHEREAS, the County's Density Bonus Ordinance has not been substantially
amended since adoption; and

WHEREAS, since that time, the legislature of the State of California has enacted
additional legislation substantially amending State Density Bonus Law; and

WHEREAS, State law requires the County to implement State Density Bonus Law, and to amend the County's Density Bonus Ordinance to be consistent with State law; and

WHEREAS, amendments to the County Density Bonus Ordinance can also achieve greater clarity and ease of interpretation and implementation of the regulations; and

WHEREAS, the purpose of both State Density Bonus Law and the County's Density Bonus Ordinance are to incentivize the production of needed affordable housing and housing targeted to other specific populations in need of dedicated housing, in exchange for relief from certain development standards; and

WHEREAS, the County's Density Bonus Ordinance is not currently published in the codified County Zoning Regulations; and

WHEREAS, publishing the County Density Bonus Ordinance as a chapter of the Zoning Regulations would improve ease of access and use of the ordinance by the public; and

WHEREAS, the San Mateo County Planning Commission considered the proposed ordinance on June 10, 2020, and voted to recommend adoption of the ordinance; and

WHEREAS, the proposed ordinance is consistent with the County’s Local Coastal Program; and

WHEREAS, the proposed ordinance constitutes an amendment to the Implementation Plan of the Local Coastal Program; and

WHEREAS, on adoption by the Board of Supervisors, the ordinance will be submitted to the California Coastal Commission for review and certification; and

WHEREAS, the ordinance will ensure that the County’s regulations are consistent with State law, are easier to interpret and implement, and are readily accessible to the public, will facilitate and promote the creation of affordable and other housing, and will help fulfill the County’s housing goals.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo, State of California, ordains as follows:

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SECTION 2. Sections 7900-7911 of The San Mateo County Ordinance Code are hereby repealed and replaced in their entirety by a new Chapter 22.6 of the Zoning Regulations, as follows:

CHAPTER 22.6. DENSITY BONUS

SECTIONS:

- 6440.1. PURPOSE
- 6440.2. DEFINITIONS
- 6440.3. STATE DENSITY BONUS LAW

- 6440.4. MINISTERIAL APPROVAL
- 6440.5. DENSITY BONUS REQUIREMENTS AND BONUS AMOUNTS
- 6440.6. RELATIONSHIP TO INCLUSIONARY HOUSING REQUIREMENT
- 6440.7. INCENTIVES AND CONCESSIONS
- 6440.8. PARKING MODIFICATIONS
- 6440.9. WAIVERS
- 6440.10. STANDARDS FOR QUALIFYING UNITS
- 6440.11. PROCEDURE FOR GRANTING OF DENSITY BONUS

SECTION 6440.1. PURPOSE. The purpose of this Chapter is to:

1. Increase the supply of housing units in the unincorporated area for very low, low, and moderate income households, senior citizens, transitional foster youth, disabled veterans, homeless persons, and lower income college students by offering a density bonus and other incentives, concessions, and waivers to developers of new residential developments that include housing units for such households;
2. Implement State Density Bonus Law (California Government Code Sections 65915 et seq.); and
3. Implement the policies of the San Mateo County General Plan Housing Element.

SECTION 6440.2. DEFINITIONS.

1. Affordable Housing Unit. An ownership or rental dwelling unit affordable to households with very low, low, or moderate incomes, as those terms are defined in State Density Bonus Law.
2. Childcare Facility. A childcare facility as defined in State Density Bonus Law.
3. Concession or Incentive. A modification in development standards, zoning code requirements, architectural design requirements, parking requirements, or other concessions or incentives identified in State Density Bonus Law, or any successor provision, that results in identifiable and actual cost reductions, in order to provide for affordable housing.
4. Density Bonus Unit. A dwelling unit within a residential development that has been granted to a developer in excess of the number of units otherwise allowed in exchange for having met the requirements of State Density Bonus Law and this Chapter.
5. Disabled Veteran Housing. Housing dedicated to disabled veterans, as defined in Section 18541 of the California Government Code.
6. Homeless Housing. Housing dedicated to homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Section 11301 et seq.).

7. Land Donation. A direct donation of land by a project developer to the County as part of a development project pursuant to the provisions of State Density Bonus Law.
8. Low Income Household. A low income household as defined in State Density Bonus Law.
9. Low Income College Student Housing. Housing dedicated for qualifying college students, as defined in State Density Bonus Law.
10. Maximum Net Density. The maximum number of dwelling units allowed on a parcel per net acre, under the Zoning Regulations and land use element of the General Plan, prior to the application of the State Density Bonus Law. If a range of densities is permitted, the maximum allowable density in the range is applicable. Where the density allowed under the Zoning Regulations is inconsistent with the density allowed under the land use element of the General Plan, the General Plan density shall prevail.
11. Moderate Income Household. A moderate income household as defined in State Density Bonus Law.
12. Qualifying Unit. A dwelling unit included in a residential development which enables the developer to qualify for a density bonus and concessions and incentives required by this Chapter. Qualifying units include units dedicated for occupancy by: (1) very low, low, or moderate income households; (2) senior households; or (3) disabled veteran households, transitional foster youth households, formerly homeless households, or low income college student households.
13. Residential Development. A project that contains five or more parcels or dwelling units as allowed by the Zoning Regulations, excluding any density bonus or second units. A residential development may include one or more housing types designed for permanent occupancy including, but not limited to, single family dwellings and/or multiple-family dwellings (both ownership and rental). A residential development includes projects with both residential and non-residential components, provided that the residential components meet the definitions in this Section.
14. Senior Citizen Housing Development. A senior citizen housing development as defined in Sections 51.3 and 51.12 of the California Civil Code.
15. State Density Bonus Law. California Government Code Section 65915 et seq., including any amendments thereto.
16. Transitional Foster Youth Housing. Housing for transitional foster youth, as defined in State Density Bonus Law.
17. Very Low Income Household. A very low income household as defined in State Density Bonus Law.

18. Waiver. A modification of development standards that would otherwise physically preclude the construction of a development meeting the criteria of this Chapter at the density otherwise permitted by State Density Bonus Law and the other provisions of this Chapter, including the concessions and incentives granted under this Chapter pursuant to State Density Bonus Law.

SECTION 6440.3. STATE DENSITY BONUS LAW. Regardless of the provisions of this Chapter, in order to receive a density bonus and any other concessions, incentives, modifications or waivers, a project must comply with all applicable provisions of State Density Bonus Law. In the event that any provisions of this Chapter conflict with State Density Bonus Law, the State Density Bonus Law shall prevail.

SECTION 6440.4. MINISTERIAL APPROVAL. Pursuant to State Density Bonus Law, the granting of any density bonus consistent with the provisions of this Chapter shall not require, in and of itself, any amendments to regulations or other discretionary approval.

SECTION 6440.5. DENSITY BONUS AND BONUS AMOUNTS. In exchange for the provision of qualifying units or provision of other public benefits as defined in this Chapter, and as required by and defined in State Density Bonus Law, a proposed project may exceed the maximum density otherwise allowed for the project (such excess being the “density bonus”), and may receive various other concessions, incentives or waivers in addition to the density bonus, as described in Sections 6440.7, 6440.8 and 6440.9.

Eligibility for Density Bonus. To be eligible for a density bonus and other concessions, incentives, and waivers pursuant to this Chapter, a project must provide the required amount of qualifying housing units, as described in Section 6440.5. The project must also: (1) meet the definition of “residential development” contained in Section 6440.2.13; (2) meet all requirements and standards of the Zoning Regulations, prior to the calculation of any additional density pursuant to the density bonus, and prior to any granted concessions, incentives, or waivers; and (3) be located within unincorporated San Mateo County, with the exception of the rural area of the Coastal Zone, as defined in the County's Local Coastal Program. Projects located within the rural area of the Coastal Zone are not eligible for a density bonus pursuant to this Chapter. A separate density bonus program, as described in Local Coastal Program Policy 3.24, applies in the rural areas of the Coastal Zone.

1. Calculation of Density Bonus. The density bonus shall be calculated based on the maximum net density allowed by the applicable zoning or the general plan land use designation, as described in Section 6440.2.10, and the number of qualifying units proposed.
 - a. Units Not Counted. When calculating the maximum density of residential development allowed, the number of qualifying units required, and the number of density bonus units to be granted, neither accessory dwelling units nor density bonus units shall be counted.

- b. Fractional Attainable Density. For the purposes of this Chapter, when calculating the maximum attainable density of residential development allowed by zoning, any resulting fraction of a unit shall be disregarded, unless the Zoning Regulations clearly state otherwise.
 - c. Fractional Qualifying and Bonus Units. For the purposes of this Chapter, when calculating (1) the number of qualifying units required to receive a density bonus and (2) the number of density bonus units to be granted, any resulting fraction shall be rounded up to the nearest whole number.
2. Qualification for Density Bonus. The minimum amount and type of qualifying units that must be provided to qualify for a density bonus is described below:
- a. Very Low Income. If at least 5 percent of the housing units in a project are restricted to very low income households, a 20 percent density bonus shall be granted, with an additional 2.5 percent density bonus granted for each additional 1 percent of housing units restricted to very low income households, up to a maximum density bonus of 35 percent.
 - b. Low Income. If at least 10 percent of the housing units are restricted to low income households, a 20 percent density bonus shall be granted, with an additional 1.5 percent density bonus granted for each additional one percent of housing units restricted to low income households, up to a maximum density bonus of 35 percent.
 - c. Moderate Income. If at least 10 percent of the housing units in a for-sale common interest development are restricted to moderate income residents, a 5 percent density bonus shall be granted, with an additional 1 percent density bonus granted for each additional one percent of housing restricted to moderate income households, up to a maximum bonus of 35 percent. The moderate income category bonus applies only to for-sale common interest development projects, and is not available for rental housing.
 - d. Transitional Foster Youth, Disabled Veterans, or Homeless. If at least 10 percent of the housing units in a project are dedicated for transitional foster youth, disabled veterans, or homeless persons, with rents of all such units restricted to the very low income level, the density bonus shall be 20 percent of the number of the type of units giving rise to the bonus.
 - e. Low Income College Student. If at least 20 percent of the housing units are dedicated for low income college students, the density bonus shall be 35 percent of the college housing units.
 - f. Senior Housing and Senior Mobile Home Park. If the project is 100 percent dedicated to senior citizen housing with units available to senior households of any income level, including a mobile-home park restricted entirely for the use of senior citizens at any income level, a 20 percent density bonus shall be granted.

- g. Childcare. A residential development that meets all provisions of this Chapter and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project shall be eligible for either:
- (1) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility, or
 - (2) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

The provision, maintenance, operation, and attendance of the childcare facility shall be in accordance with all the provisions of State Density Bonus Law, Section 69515(h).

- h. 100 Percent Affordable. If 100 percent of the units in a project are reserved for very low, low, and moderate income households, with a maximum of 20 percent reserved for moderate income, an 80 percent density bonus shall be granted.
- i. Land Donation. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the County, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density for the entire development, in addition to the otherwise allowed density bonus, up to a maximum combined density bonus of no more than 35 percent. The donated land must be in accordance with all provisions of State Density Bonus Law, Section 69515(g).

The available density bonuses in the categories described in Section 6440.5.2 are summarized in the table below:

Qualifying Unit Percentage	Very Low Income Density Bonus	Low Income Density Bonus	Moderate Income Density Bonus	Land Donation Bonus	Foster Youth/Disabled Vets/Homeless Bonus ¹	Low-Income College Student Bonus ¹	Senior Bonus (for 100% senior projects) ²
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	35	23	7	17	20		20
13	35	24.5	8	18	20		20
14	35	26	9	19	20		20
15	35	27.5	10	20	20		20
16	35	29	11	21	20		20
17	35	30.5	12	22	20		20
18	35	32	13	23	20		20
19	35	33.5	14	24	20		20
20	35	35	15	25	20	35	20
21	35	35	16	26	20	35	20
22	35	35	17	27	20	35	20
23	35	35	18	28	20	35	20
24	35	35	19	29	20	35	20
25	35	35	20	30	20	35	20
26	35	35	21	31	20	35	20
27	35	35	22	32	20	35	20
28	35	35	23	33	20	35	20
29	35	35	24	34	20	35	20
30	35	35	25	35	20	35	20
31	35	35	26	35	20	35	20
32	35	35	27	35	20	35	20
33	35	35	28	35	20	35	20
34	35	35	29	35	20	35	20
35	35	35	30	35	20	35	20
36	35	35	31	35	20	35	20
37	35	35	32	35	20	35	20
38	35	35	33	35	20	35	20
39	35	35	34	35	20	35	20
40	35	35	35	35	20	35	20

1. For the Foster Youth, Disabled Veterans, Homeless, and Low Income College Student Categories, the density bonus is a percentage of the qualifying units in those categories, rather than the total units in the proposed project.
2. Senior projects need not provide any restricted affordable housing, but must be 100% senior projects or senior mobile home projects.
3. No Combining of Categories. Except in the case of land donations, as described in Section 6440.5.2.i, and in the case of provision of childcare, as described in Section 6440.5.2.g, the bonus requested and granted pursuant to this Section can be based on only one of the qualifying categories. Categories cannot be combined.

SECTION 6440.6. RELATIONSHIP BETWEEN THE DENSITY BONUS AND THE COUNTY'S INCLUSIONARY HOUSING REQUIREMENT. Any units required to be provided as affordable pursuant to the County's Inclusionary Housing Ordinance (Zoning Regulations Section 7908, et. seq.) shall count toward the qualifying units required to receive a density bonus as described in this Chapter, so long as the units meet all required provisions of this Chapter. Regardless of any provisions of this Chapter, however, projects must always meet the applicable requirements of the County's Inclusionary Housing Ordinance.

SECTION 6440.7. INCENTIVES AND CONCESSIONS. In addition to the density bonus, a qualifying project applicant may request various concessions and incentives that provide relief from development standards otherwise required.

1. The applicant shall receive the following number of incentives and concessions:
 - a. One incentive or concession for projects with at least 5 percent of the total units for very low income households, 10 percent for low income households, or 10 percent for moderate income households.
 - b. Two incentives or concessions for projects with at least 10 percent of the total units for very low income households, 20 percent for low income households, or 20 percent for moderate income households.
 - c. Three incentives or concessions for projects with at least 15 percent of the total units for very low income households, 30 percent for low income households, or 30 percent for moderate income households.
 - d. Four incentives or concessions for projects meeting the criteria of Section 6440.5.2.h (100 percent affordable projects).
 - e. One additional incentive or concession for projects meeting the criteria of Section 6440.5.2.g (projects providing childcare).
2. Request for Incentives and Concessions. A request for incentives and concessions must be submitted in writing as part of the project application, as described in Section 6440.11. Granted concessions, incentives, or parking modifications shall be identified by the County as described in that Section, and in

project conditions and approvals. Concessions and incentives shall be granted in the amounts described in Section 6440.6.1 unless the County makes the following findings, supported by substantial evidence:

- a. The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs or affordable rents.
- b. The concession or incentive 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, with no feasible method to satisfactorily avoid or mitigate without rendering the project unaffordable to low income and moderate income households.
- c. The concession or incentive would have a specific adverse impact on real property that is listed in the California Register of Historical Resources, with no feasible method to satisfactorily avoid or mitigate without rendering the project unaffordable to low income and moderate income households.
- d. The concession or incentive would be contrary to State or federal law.

3. Concessions and Incentives. Concessions and incentives, as defined in Section 6440.2.3, include the following:

- a. Building height or building stories.
- b. Side and rear yard setbacks.
- c. Lot coverage.
- d. Floor area.
- e. Parking.
- f. Architectural design standards related to bulk and mass.
- g. Minimum separation between buildings.
- h. Parking modifications in addition to or distinct from those provided by State Density Bonus Law as described in Section 6440.8.
- i. Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
- j. Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in Section

50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Government Code Section 65915(c).

SECTION 6440.8. PARKING MODIFICATIONS. The State Density Bonus Law provides alternative parking requirements that may be lower than those otherwise allowed by County regulations. Parking reductions specified in State Density Bonus Law and described in this Section are not considered concessions, incentives, or waivers. However, the applicant may request additional concessions, incentives, or waivers related to parking, as described in Sections 6440.7 and 6440.9.

1. Parking required, inclusive of handicapped and guest parking, may be no more than:
 - a. 1 on-site parking space for studio and one bedroom units
 - b. 2 on-site parking spaces for two and three bedroom units
 - c. 2.5 on-site parking spaces for units with four or more bedrooms
2. Lower parking ratios apply to the following specified projects:
 - a. 0.5 spaces per bedroom for rental or for sale projects with at least 11 percent very low income or 20 percent low income units, located within one-half mile of an accessible major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code.
 - b. 0.5 spaces per unit for rental projects which are 100 percent affordable to low income households, located within one-half mile of an accessible major transit stop.
 - c. 0.5 spaces per unit for rental senior projects which are 100 percent affordable to low income households, and have paratransit service or are located within one-half mile of an accessible fixed bus route service operating at least eight times per day.
 - d. For rental special needs projects, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, which are 100 percent affordable to low income households and have paratransit service or are located within one-half mile of an accessible fixed bus route service operating at least eight times per day, no parking requirement shall be imposed.
3. In the calculation of required parking spaces, any resulting fraction shall be rounded up to the nearest whole number.
4. All parking required pursuant this Section may be provided as uncovered parking or tandem parking.

SECTION 6440.9. WAIVERS. Developers of projects eligible for a density bonus may request a waiver of any development standard that would physically preclude the construction of a housing development with the density bonus and incentives to which the project is entitled.

1. Demonstration of Impact. The applicant shall bear the burden of demonstrating that the development standards that are requested to be waived will have the effect of physically precluding the construction of the housing development with the density bonus and incentives.
2. No Limit on Waivers. There is no limit to the number of waivers that may be granted.
3. Request for Waivers. A request for a waiver must be submitted in writing as part of the application process specified in Section 6440.11.
4. Granting or Denial of Waivers. The County shall grant a waiver unless the decision maker makes any of the following findings in writing and supported by substantial evidence:
 - a. The waiver would have a specific adverse impact, as defined in Government Code Section 65589.5(d)(2), upon health, safety, or the physical environment, and there is no feasible method to satisfactorily mitigate or avoid the impact.
 - b. The waiver would have an adverse impact on real property that is listed in the California Register of Historical Resources with no feasible method to satisfactorily mitigate or avoid the impact.
 - c. The development standard for which a waiver is requested would not physically preclude the construction of the housing development with the density bonus and incentives.
 - d. The waiver would be contrary to State or federal law.
5. The granting of any waivers pursuant to this Section shall not reduce the number of concessions, incentives, or parking modifications for which a project may otherwise be eligible pursuant to Sections 6440.7 and 6440.8.
6. If the housing development receives a waiver of maximum density based on its location within one-half mile of a major transit stop, as described in State Density Bonus Law, it shall not be eligible for waivers.

SECTION 6440.10. STANDARDS FOR QUALIFYING UNITS. Qualifying units for the density bonus shall meet the following standards.

1. Standards for Design and Construction of Qualifying Units

- a. Qualifying units must be constructed concurrently with the other units in a residential development. Where phasing of construction is necessary, each phase shall provide the required ratio of qualifying units to market-rate units to ensure that the qualifying units are made available for sale or rent at the same time as other units in the development.
 - b. Qualifying units shall be integrated into the overall design and distributed throughout the development. The units shall generally be of the same size and quality and shall have similar amenities as the market-rate units, and their exterior materials and appointments shall be architecturally compatible with the market-rate units in the development.
 - c. The mix of unit sizes and bedroom counts in the qualifying units shall be directly proportional to the mix of unit sizes and bedroom counts provided in the development as a whole (i.e., if 20 percent of the units are of one size and style, 20 percent of the qualifying units shall be of that size and style).
2. Occupancy Standards for Qualifying Units. Qualifying units are to be sold or rented only to households certified by the County Housing Department as qualifying for the appropriate category of household as defined in this Chapter, pursuant to the provisions of State Density Bonus Law. Qualification and certification of tenants or buyers shall be at the sole discretion of the Housing Department, unless otherwise determined by the Community Development Director.
3. Specific Standards for Ownership Qualifying Units
 - a. Sale Prices for Qualifying Ownership Units. Ownership qualifying units shall be offered at prices that are considered affordable to very low, low or moderate income households, as determined by the County Housing Department, pursuant to affordability provisions described in State Density Bonus Law.
 - b. Buyer Certification and Selection. Qualifying units are to be sold to households certified by the County Housing Department. Buyers eligible to purchase qualifying units will be selected by the developer in accordance with a marketing program approved by the County Housing Department. The marketing program shall set forth an equitable selection process to be used to market the affordable units established in conformance with this Chapter. Selection criteria may include, but not be limited to, household income and assets, household size, and the size of available units, pursuant to the provisions of State Density Bonus Law.

c. Guarantee of Continued Availability; Resale Controls.

- (1) Qualifying for-sale units are required to be sold only to persons and/or families of very low, low, or moderate income, as required by the qualifying provisions of State Density Bonus Law, and the units must be offered at an affordable housing cost, as that cost is defined in Health and Safety Code Section 50052.5. The County Housing Department shall determine and certify the qualifications of the initial purchaser, and the allowable price of the qualifying units.
- (2) The County shall require an equity sharing agreement for all for-sale units, unless such an agreement is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:
 - (a) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The County shall recapture any initial subsidy, as defined in subparagraph (2), and its proportionate share of appreciation, as defined in subparagraph (3), which amount shall be used within 5 years for any of the purposes described in Health and Safety Code Section 33334.2(e) that promote home ownership.
 - (b) For purposes of this subdivision, 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 downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.
 - (c) For purposes of this subdivision, the County's proportionate share of appreciation shall be equal to the ratio of the County's initial subsidy to the fair market value of the home at the time of initial sale.

- (3) The owners of any qualifying unit shall incorporate as a part of the grant deed conveying title of any such unit, the declaration of restrictions, stating the restrictions imposed by this Chapter including, but not limited to, all applicable resale controls and occupancy restrictions. The terms of the restrictions shall specifically assign to the County all of the sellers' rights to enforce the declaration of restrictions in the manner provided by law. The County or its designee shall monitor resales of qualifying units, for purposes of preventing any abuse or violation of sale or resale controls.

4. Specific Standards for Qualifying Rental Units

- a. Rents for Qualifying Rental Units. Qualifying rental units required to be offered at below-market rents shall be offered at rent levels affordable to very low, low or moderate income households, as determined by the County Housing Department, consistent with the provisions of State Density Bonus Law.
- b. Tenant Certification and Selection. Rental qualifying units are to be rented to households certified by the County Housing Department. Owners of rental qualifying units must provide adequate records to the authorized staff of the Housing Department to demonstrate, to the satisfaction of the County, that all tenants occupying the designated affordable rental units are eligible under the terms of this Chapter and the specific agreement implementing the affordability and occupancy requirements executed by the County and the developer at the time of construction of the units, as described in Section 6440.11. The agreement will provide for a fair and equitable tenant selection process to ensure the selection of eligible tenants. Selection criteria may include, but not be limited to, amount of household income and assets, household size, and the size of available units. Selection methodology must be approved by the County Housing Department.
- c. Guarantee of Continued Availability; Rent Controls. Prior to final approval of a rental development project, the developer shall enter into an agreement with the County, which shall be recorded, specifying the manner of compliance with this Chapter. The agreement shall be binding for no less than fifty-five years, regardless of any change of ownership of any qualifying units. At a minimum, the agreement shall specify the following for the qualifying units in the development, all of which, with the exception of the density bonus units and other concessions, incentives, modifications, and waivers required by State Density Bonus Law, shall be approved at the County's discretion:
 - (1) The number of qualifying units, their size and number of bedrooms.
 - (2) The party/process responsible for certifying buyer/tenant eligibility, which must be approved by the County Housing Department.

- (3) The method by which vacancies will be marketed and filled, which must be approved by the County Housing Department.
- (4) The standards for maximum qualifying incomes for very low, low, or moderate income households, which must be approved by the County Housing Department.
- (5) The standards for maximum rents for qualifying units for very low, low, or moderate income households, which must be approved by the County Housing Department.
- (6) The restrictions and enforcement mechanisms binding on the property upon sale or transfer, which shall be in accordance with the provisions of State Density Bonus Law and must be approved by the County Housing Department.

The above provisions shall take the form of a binding agreement between the developer and the County, and execution of the agreement shall be a condition of permit approval. The above provisions shall also be, in the case of rental units, recorded as a deed restriction on the title of the rental property, and in the case of for-sale units, as a deed restriction on the title of each of the individual qualifying for-sale unit. The form of agreement shall be approved by County Counsel.

SECTION 6440.11. PROCEDURE FOR GRANTING OF DENSITY BONUS.

1. Application for Density Bonus and Determination of Bonus

- a. Formal application and determination. An applicant requesting a density bonus pursuant to the provisions of this Chapter shall make a request for the bonus, describing the bonus requested, the qualifying units proposed, and any concessions, incentives, waivers, and modifications requested, in addition to any financial justification or other documentation as required by this Chapter, upon submittal of an application for development.

When the application is deemed complete, the County shall provide the applicant with a determination of the amount of the density bonus for which the project is eligible, and a determination of all other incentives, concessions, waivers, and modifications that will be granted.

- b. Preliminary Application and County Guidance. Prior to formal submittal of an application for project approval, an applicant may submit to the County a preliminary proposal for the development of housing pursuant to this Chapter. The preliminary proposal should describe the project, specifying the total number of units, the proposed number and type of qualifying units, and any concessions, incentives, modifications and/or waivers requested. The preliminary proposal should also include a statement demonstrating how the concessions and/or incentives will improve the financial feasibility of the project and assist the developer in providing the qualifying units.

Within 90 days of receipt of a preliminary proposal, the County shall notify the developer in writing of the manner in which the County will comply with this Chapter. The report to the developer should confirm the maximum attainable density of residential development allowed by the Zoning Regulations for the subject site, the number of density bonus units that will be allowed, and which concessions, incentives, modifications, and/or waivers will be granted by the County, pending formal approval by the relevant decision-maker, and the justification for denying any requested concessions, incentives, modifications, or waivers, if applicable.

2. Project Approval and Granting of Density Bonus

- a. The density bonus shall be granted by the County ministerially, without any additional discretionary approvals separate from those otherwise required for the project, based on the number of qualifying units proposed.
- b. Any concessions, incentives, waivers, and modifications granted to the project will also be considered and approved by the final decision-maker for the project, which, depending on the nature of the approvals required for the project, may be the Community Development Director, the Zoning Hearing Officer, the Planning Commission, or the Board of Supervisors. However, any denial of requested concessions, incentives, waivers, or modifications, if applicable, must be accompanied by written findings establishing the basis for the denial, and meeting the requirements of State Density Bonus Law

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT. Approval of this ordinance is exempt from environmental review under the general rule in California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment, because: the ordinance provides a density bonus for the inclusion of affordable housing units within some residential development projects pursuant to the County Zoning Regulations; those projects will be the subject of independent environmental review, if required by CEQA, prior to approval; and there can therefore be no possibility that the adoption of the ordinance itself will have a significant effect on the environment. Adoption of this ordinance is also exempt from environmental review under the general rule in California Environmental Quality Act (“CEQA”) Guidelines Section 15061(b)(3) because the ordinance is a local implementation of State laws that

the County has no discretion to disregard or disapprove, and which are already in effect and applicable to projects in the unincorporated County regardless of any amendments to the County's local ordinance.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance.

SECTION 5. PUBLICATION. The Clerk of the Board shall publish this Ordinance in accordance with applicable law.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from the passage date thereof, except in the County's Coastal Zone, where it shall be effective immediately upon certification by the California Coastal Commission.

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