

Meeting Date: 8/04/10 (1)

## ORDINANCE NO. 10068 (NEW SERIES)

### AN ORDINANCE AMENDING THE ZONING ORDINANCE RELATED TO DENSITY BONUSES AS AN INCENTIVE TO PROVIDE AFFORDABLE HOUSING.

The Board of Supervisors of the County of San Diego ordains as follows:

**Section 1.** The Board of Supervisors declares that the intent of this ordinance is to update the Zoning Ordinance by making the following amendments to add, clarify or correct miscellaneous provisions related to existing density bonus regulations to bring them into conformance with state requirements, to revise and incorporate the provisions of Board Policies I-79 and I-102 into the Zoning Ordinance and thereby repeal the policies, and to implement the goals, policies, and objectives of the General Plan Housing Element. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

**Section 2.** Section 1110, DEFINITIONS (B) of the San Diego County Zoning Ordinance is amended to add the term *Base Units* inserted into the appropriate alphabetical location to read as follows:

**Base Units:** The number of dwelling units proposed for a housing development, exclusive of the density bonus units. The number of base units cannot exceed the maximum allowable residential density.

**Section 3.** Section 1110, DEFINITIONS (C) of the San Diego County Zoning Ordinance is amended to add the terms *Child Care Facility* and *County Affordable Senior Housing Program* inserted into the appropriate alphabetical location to read as follows:

**Child Care Facility:** A child day care facility other than a family day care home including, but not limited to, infant centers, preschools, extended day care facilities, and school age child care centers.

**County Affordable Senior Housing Program:** The County's program to encourage the provision of senior rental housing that is affordable. See Section 6360 a.2.

**Section 4.** Section 1110, DEFINITIONS (D) of the San Diego County Zoning Ordinance is amended to add the terms *Density Bonus*; *Density Bonus Housing Agreement*; *Density Bonus Permit*; *Density Bonus Unit*; *Density, Maximum Allowable Residential*; and *Development Standard* inserted into the appropriate alphabetical location to read as follows:

**Density Bonus:** A density increase over the otherwise maximum allowable residential density under the Zoning Ordinance and land use element of the general plan as of the date of a complete application to the County.

**Density Bonus Housing Agreement:** A legally binding agreement between a developer and the County to ensure that the requirements of the density bonus application and the Zoning Ordinance are satisfied.

**Density Bonus Permit:** A permit issued by the County based upon an applicant's compliance with the requirements of the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449.

**Density Bonus Unit:** As applied in the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449, density bonus unit is a

residential unit that exceeds the number of units allowed under the otherwise maximum allowable residential density for the development site.

Density, Maximum Allowable Residential: (See Maximum Allowable Residential Density)

Development Standard: As applied to the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449, development standard includes a site or construction condition including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

**Section 5.** Section 1110, DEFINITIONS (F) of the San Diego County Zoning Ordinance is amended to add the term *Financial Pro Forma* inserted into the appropriate alphabetical location to read as follows:

Financial Pro Forma: As applied in the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449, a financial statement which clearly demonstrates that a requested incentive results in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved units in a proposed housing development.

**Section 6.** Section 1110, DEFINITIONS (H) of the San Diego County Zoning Ordinance is amended to add the terms *Household, Low or Lower Income*; *Household, Moderate Income*; *Household, Very Low Income*; and *Housing Development* inserted into the appropriate alphabetical location to read as follows:

Household, Low or Lower Income: A household whose income does not exceed the lower income limits applicable to San Diego County as published and periodically updated by the California Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

Household, Moderate Income: A household whose income does not exceed the moderate income limits applicable to the San Diego County as published and periodically updated by the California Department of Housing and Community Development pursuant to Section 50093 of the California Health and Safety Code.

Household, Very Low Income: A household whose income does not exceed the very low income limits applicable to San Diego County, as published and periodically updated by the California Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Housing Development: As applied in the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449, housing development shall mean a development project for five or more residential units and be as further defined in Section 65915(i) of the California Government Code.

**Section 7.** Section 1110, DEFINITIONS (I) of the San Diego County Zoning Ordinance is amended to add the term *Incentive* inserted into the appropriate alphabetical location to read as follows:

Incentive: As applied in the Density Bonus Program at Sections 6350 through 6399 and the Density Bonus Permit Procedures at Sections 7400 through 7449, incentive shall mean such regulatory incentive or concession as defined in California Government Code Subsection 65915(k).

**Section 8.** Section 1110, DEFINITIONS (L) of the San Diego County Zoning Ordinance is amended to modify the terms *Low-Income Family*, *Low-Income Household*, *Lower-Income Family*, and *Lower-Income Household* to read as follows:

Low-Income Family: (See Household, Low or Lower Income)

Low-Income Household: (See Household, Low or Lower Income)

Lower-Income Family: (See Lower-Income Household; Household, Low or Lower Income)

Lower-Income Household: A household which cannot obtain decent, safe, and sanitary housing without assistance, as determined pursuant to standards established by the Board of Supervisors. (Also see Household, Low or Lower Income)

**Section 9.** Section 1110, DEFINITIONS (M) of the San Diego County Zoning Ordinance is amended to modify the terms *Moderate-Income Family* and *Moderate-Income Household* and to add the terms *Market Rate Unit* and *Maximum Allowable Residential Density* inserted into the appropriate alphabetical location to read as follows:

Market Rate Unit: A dwelling unit that is not a reserved unit.

Maximum Allowable Residential Density: The density calculated under Section 4115 of the Zoning Ordinance. If the density allowed under the Zoning Ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

Moderate-Income Family: (See Household, Moderate Income)

Moderate-Income Household: (See Household, Moderate Income)

**Section 10.** Section 1110, DEFINITIONS (R) of the San Diego County Zoning Ordinance is amended to repeal the term *Reserved Dwelling Unit* and to add the term *Reserved Unit* inserted into the appropriate alphabetical location to read as follows:

Reserved Unit: A dwelling unit that will be reserved for sale or rent to, and affordable to, very low, low, or moderate income households or reserved for sale or rent to qualifying senior citizen residents.

**Section 11.** Section 1110, DEFINITIONS (S) of the San Diego County Zoning Ordinance is amended to add the terms *Senior Citizen* and *Senior Citizen Housing Development* inserted into the appropriate alphabetical location to read as follows:

Senior Citizen: A person 62 years of age or older or 55 years of age or older in a senior citizen housing development as defined in California Civil Code Section 51.3.

Senior Citizen Housing Development: A residential development that is reserved for senior citizens and consists of at least 35 dwelling units as defined in California Civil Code Section 51.3.

**Section 12.** Section 1110, DEFINITIONS (U) of the San Diego County Zoning Ordinance is amended to add the following terms *Unit, Base*; *Unit, Density Bonus*; *Unit, Market Rate*; and *Unit, Reserved* inserted into the appropriate alphabetical location to read as follows:

Unit, Base: (See Base Units)

Unit, Density Bonus: (See Density Bonus Unit)

Unit, Market Rate: (See Market Rate Unit)

Unit, Reserved: (See Reserved Unit)

**Section 13.** Section 1110, DEFINITIONS (V) of the San Diego County Zoning Ordinance is amended to modify the terms *Very Low-Income Family* and *Very Low-Income Household* to read as follows:

Very Low-Income Family: (See Household, Very Low Income)

Very Low-Income Household: (See Household, Very Low Income)

**Section 14.** Section 4115 of the San Diego County Zoning Ordinance is amended to read as follows:

4115 COMPUTATION OF PERMITTED NUMBER OF DWELLING UNITS.

The maximum number of dwelling units permitted within the exterior boundary lines of any subdivision or a single lot shall be equal to the product of the total of the net lot area of that subdivision, or lot expressed in acres multiplied by the applicable maximum density designator. The product shall be rounded off to the nearest whole number of dwelling units. A product with a fraction of one-half or less of a dwelling unit shall be rounded down to the nearest whole number of dwelling units except that a product of less than one dwelling unit shall be interpreted as permitting one dwelling unit. A product with a fraction of more than one-half of a dwelling unit shall be rounded up to the nearest whole number of dwelling units. The maximum number of dwelling units permitted within the exterior boundary lines of any subdivision or a single lot, as calculated under this section, shall be reduced to an achievable number of dwelling units when such reduction is needed to comply with all applicable land use requirements. The resulting density shall be the Maximum Allowable Residential Density. The use of a dash (“-”) as a density designator shall indicate that no dwelling unit is allowed as a principal or secondary use. This prohibition shall not apply to dwellings permitted by the Temporary Use Regulations or the Accessory Use Regulations.

**Section 15.** Section 4120 of the San Diego County Zoning Ordinance is amended to read as follows:

#### 4120 EXCEPTIONS TO DENSITY REGULATIONS.

The following are exceptions to the Density Regulations:

- a. Farm Employee Housing. Farm Employee Housing is not subject to Density Regulations.
- b. Farm Labor Camps. Dwelling units built pursuant to a use permit to accommodate a farm labor camp are not subject to Density Regulations.
- c. Density Bonus Projects for Affordable or Senior Housing. An increase in density exceeding the applicable Density Regulations may be approved for projects that reserve housing units for moderate, low, or very low income households or for senior housing in accordance with the Density Bonus Program found at Sections 6350 through 6399.

**Section 16.** Sections 6350 through 6399, inclusive, are added to the San Diego County Zoning Ordinance to read as follows:

#### DENSITY BONUS PROGRAM

##### 6350 TITLE AND PURPOSE.

The provisions of Sections 6350 through 6399, inclusive, shall be known as the Density Bonus Program. The purpose of these provisions is to implement the state requirements at Government Code Section 65915 et seq. and the policies and programs in the Housing Element of the San Diego County General Plan. As required by Government Code Section 65915 et seq., these provisions offer density bonuses and incentives for the development of housing that is affordable to residents who qualify under Section 6355. The Density Bonus Permit Procedures, commencing at Zoning Ordinance Section 7400, shall apply to all density bonus projects except for housing under the County Affordable Senior Housing Program which shall comply with the procedures found at Zoning Ordinance Section 6360 a.2.

In order to be eligible for a density bonus and incentives, a proposed housing development shall comply with the following provisions of the Density Bonus Program and all other applicable local, state, and federal requirements.

##### 6355 ELIGIBILITY FOR DENSITY BONUS PERMIT.

- a. Income and Age Requirements. A housing development proposed to qualify for a density bonus shall be designed and constructed so that it includes at least one of the following:
  1. Ten percent of the total number of base units are reserved for lower income households.

2. Five percent of the total number of base units are reserved for very low income households.
3. The project is a senior citizen housing development or is a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Civil Code Sections 798.76 or 799.5.
4. Ten percent of the total dwelling units in a common interest development, as defined in Civil Code Section 1351, for persons and families in a moderate income household provided that all units in the development are offered to the public for purchase.
5. Under the County Affordable Senior Housing Program, one hundred percent of the units are reserved at an affordable rent, as defined in Health and Safety Code Section 50053, to very low, low, or moderate income senior citizens.

If the development meets more than one of the qualifications listed above, the applicant shall elect only one qualifying option.

- b. Land Donation. An applicant for a tentative subdivision map, parcel map, or other residential development, who donates land to the County for very low income housing and meets the requirements of Government Code Section 65915, shall be eligible for a density bonus. If the applicant also meets one of the eligibility requirements of subsections a.1. through a.4., that density bonus may be combined with the land donation bonus up to a maximum of 35 percent.
- c. Condominium Conversion Projects. An applicant who proposes to convert apartments to a condominium project, provides at least 33 percent of the total base units for moderate income households or at least 15 percent for lower income households, and meets the requirements of Government Code Section 65915.5 shall be eligible for a density bonus.
- d. Child Care Facilities. A housing development that meets one of the eligibility requirements of subsections a.1. through a.4. and includes a child care facility located on the site of, as part of, or adjacent to, the development shall be eligible for a density bonus as defined in Government Code Section 65915(h).
- e. Minimum Project Size. The density bonus provided by this ordinance shall be available only to a housing development of five or more dwelling units, exclusive of the bonus units. To meet the eligibility requirements of subsection a.3., a Senior Citizen Housing Development must have at least 35 dwelling units, exclusive of the bonus units.

#### 6360 DENSITY BONUS.

- a. Density Bonus Allowance. A housing development that complies with the eligibility requirements of Section 6355 shall be entitled to a density bonus permit as follows:
  1. Density Bonus Table. The total number of base units, exclusive of the additional bonus units, shall be the basis for determining the percentage of reserved units. The total number of base units shall be calculated in accordance with Section 4115 and be consistent with the maximum allowable residential density under the Zoning Ordinance and the land use element of the general plan. The density bonus shall be calculated based on the Density Bonus Table.

## DENSITY BONUS TABLE

Income Category Household Income Category of Reserved Units	Reserved Units Minimum % of Base Units that must be Reserved to qualify for Bonus	Bonus Units Bonus Allowed		
		Minimum Bonus (% of Base Units)	Additional bonus for each 1% increase in reserved units	Maximum Bonus (% of Base Units)
Very Low Income	5%	20%	2.5%	35%
Low Income	10%	20%	1.5%	35%
Moderate Income (Ownership Units Only)	10%	5%	1%	35%
Senior Citizen Housing Development	100%	20%	--	20%
<b>Land Donation</b> for Very Low Income Housing	10% of Market- Rate Units	15%	1%	35%
<b>Condominium Conversion</b>				
Lower Income	15%	25%	--	25%
Moderate Income	33%	25%	--	25%
<b>Child Care Facility</b>	Must qualify under Section 6355 a.1. – a.4.	Additional residential space equal to or greater than the square footage of the child care facility or one additional incentive		
<b>County Affordable Senior Housing Program (Rental Units Only)</b>				
Very Low Income	100%	50% to a maximum of 45 units/acre*		
Low Income	100%	45% to a maximum of 45 units/acre*		
Moderate Income	100%	40% to a maximum of 45 units/acre*		

\* The density cap of 45 units per acre is calculated based on the net lot area per Section 4115.

### 2. County Affordable Senior Housing Program.

- i. An Administrative Permit authorizing a density bonus for an affordable rental senior housing project may be approved in accordance with the Administrative Permit Procedure commencing at Section 7050 if the project meets the requirements of Section 6355 a.5. and this section and if it is found that the location, size, and design of the proposed use will not adversely affect or be materially detrimental to the San Diego County General Plan, adjacent uses, residents, buildings, structures, or natural resources, with consideration given to:
  - a) The type and density of the housing development would not have a harmful adverse effect on surrounding neighborhood character.
  - b) The site is physically suitable for the density of development proposed.

- c) There is demonstrated capacity and service of sewer, water, schools (as may be required), fire, police protection and utilities available to the housing development.
    - d) The housing development and surrounding areas have adequate access to accommodate the generation of traffic.
    - e) The site has reasonable proximity and access to special support services (e.g., retail and convenience uses, public transit, emergency medical facilities, etc.) as may be required by the type and density of development proposed.
  - ii. The County Affordable Senior Housing Program shall be available only to a housing development of five or more dwelling units, exclusive of the bonus units. The residents shall be persons 62 years of age or older or 55 years of age or older in a senior citizen housing development consisting of at least 35 dwelling units, exclusive of the bonus units.
  - iii. The housing development must be located in an area with a General Plan density of at least 10.9 units per acre.
  - iv. Density bonus calculations shall be made as specified in Section 6360 b.
  - v. Bonus units must be reserved and rented to senior citizens at the same level of affordability as the proposed development.
  - vi. The maximum density, including the bonus units, cannot exceed 45 units per acre based on the net lot area.
  - vii. The applicant will be required to enter into a density bonus housing agreement with the County's Department of Housing and Community Development. The agreement shall be subject to and comply with the density bonus housing agreement provisions set forth in Section 7430.
  - viii. A housing development located in a specific plan area shall not be allowed a density bonus which causes the overall maximum density of the specific plan to be exceeded.
  - ix. Parking requirements shall be met as specified in Section 6370.
  - x. Requested incentives are subject to the provisions of Zoning Ordinance Section 6365, except that the applicant shall not be required to submit a financial pro forma under Section 7410 b.2. An applicant for a project under the County Affordable Senior Housing Program shall receive up to three incentives, unless disapproved with written findings in accordance with Section 7420 a.
- 3. Land Donation For Very Low Income Units. When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to the County for very low income housing and meets the requirements of Government Code Section 65915(g), the applicant shall be entitled to a 15 percent minimum increase above the otherwise maximum allowable residential density.
  - i. The donated land must have all permits and approvals necessary for the development of very low income housing units equal to at least 10 percent of the market rate units within the proposed development.
  - ii. If the proposed development also includes units reserved for affordable housing, the density bonus from the donated land shall be in addition to the density bonus permitted for the provision of housing reserved for very low, low, moderate, or senior households up to a maximum combined density increase of 35 percent.

4. Condominium Conversion Projects. A condominium conversion project which meets the requirements of Government Code Section 65915.5 shall receive either a density bonus of 25 percent or incentives of equivalent financial value.
  5. Child Care Facilities. A housing development with a child care facility that meets the eligibility requirements of Section 6355 d. shall be entitled to one of the following subject to the requirements of Government Code Section 65915(h):
    - i. An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility. Any additional amount of residential space that exceeds the amount of square feet in the child care facility must be approved by the approving authority. The additional square feet of residential space may be used for additional residential units that must meet the average square footage size of the other residential units in the development.
    - ii. An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- b. Density Bonus Calculations.
1. Base Units. The number of base units shall not exceed the maximum allowable residential density as permitted by the County's Zoning Ordinance and General Plan.
    - i. The net lot area of the project site shall be the basis on which the number of base units is determined.
    - ii. The density bonus percentage shall be calculated using the total number of base housing units and shall not include the density bonus units.
    - iii. When calculating the maximum number of base dwelling units permitted on a project site in accordance with Section 4115, a decimal fraction of .5 or less shall be rounded down to the nearest whole number of dwelling units. A decimal fraction of greater than .5 shall be rounded up to the nearest whole number of dwelling units.
    - iv. The maximum number of dwelling units permitted within the exterior boundary lines of any subdivision or a single lot, as calculated under Section 4115, shall be reduced to an achievable number of dwelling units when such reduction is needed to comply with all applicable land use requirements. The resulting density shall be the Maximum Allowable Residential Density.
  2. Density Bonus Units. When calculating the number of density bonus units to be granted to an applicant under Government Code section 65915, a fraction of a density bonus unit shall be rounded up to the nearest whole number.
  3. Split Zones. If the housing development site is located in two or more zones, the number of dwelling units permitted in the development is the sum of the dwelling units permitted in each of the zones. Within the development, the permitted number of dwelling units may be distributed without regard to the zone boundaries.

#### 6365 INCENTIVES.

- a. The applicant for a density bonus permit may qualify for one or more of the following incentives:
  1. A reduction in required site development standards or a modification of zoning code requirements or 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. and that results in

identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved units in the proposed housing development.

2. Approval of mixed-use land uses not otherwise allowed by the County Zoning Ordinance 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 with existing or planned development in the area where the project will be located.
  3. Other regulatory incentives proposed by the applicant or the County that will result in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved units in the proposed housing development.
- b. Permitted Number. The applicant shall receive the following number of incentives, unless disapproved with written findings in accordance with Section 7420 a:

**INCENTIVES SUMMARY**

Income Category of Reserved Units	% of Reserved Units		
Very Low Income	5%	10%	15%
Low Income	10%	20%	30%
Moderate Income (Ownership Units Only)	10%	20%	30%
County Affordable Senior Housing Program (Rental Units Only)	--	--	100%
<b>Maximum Number of Incentives</b>	1	2	3

- c. Type Of Incentive.
1. The need for incentives will vary for different housing developments. Therefore, the allocation of incentives shall be determined on a case-by-case basis. The incentive may include, but is not limited to, any of the following:
    - i. Reduced minimum lot dimensions.
    - ii. Reduced minimum lot setback for each side yard (each side is a separate incentive).
    - iii. Reduced minimum lot setback for front yard.
    - iv. Reduced minimum lot setback for rear yard.
    - v. Reduced minimum group usable open space.
    - vi. Reduced minimum private usable open space.
    - vii. Increased maximum building stories.
    - viii. Increased maximum building height.
  2. Other regulatory incentives proposed by the developer or the County which result in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved units.
  3. Nothing in this section requires the County to provide direct financial incentives for the housing development, including but not limited to, the provision of publicly owned land or the waiver of fees or dedication requirements.

- a. An applicant may submit a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a housing development at the densities or with the incentives permitted by the Density Bonus Program.
- b. Development standards that may be waived or reduced under this section include site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation, including, but not limited to the following:
  - i. A height limitation.
  - ii. A setback requirement.
  - iii. A floor area ratio.
  - iv. An onsite open-space requirement.
  - v. A parking ratio that applies to a residential development.
- c. A proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development at the densities or with the incentives permitted by the Density Bonus Program shall be approved unless the approval authority makes a written finding to deny the proposal, based upon substantial evidence, as specified in Section 7420 b.

**6370 PARKING REQUIREMENTS.**

- a. Applicability. The following parking requirements apply to development that is eligible for a density bonus. Any additional modifications will be considered an incentive as explained in Section 6365.
- b. Number Of Parking Spaces Required.
  - 1. The County shall require the following vehicular parking ratios for a project that meets the eligibility requirements for a density bonus, inclusive of parking for the disabled and guest parking.

**PARKING REQUIREMENTS**

Number of Bedrooms	Number of on-site parking spaces needed
0 – 1	1
2 – 3	2
4+	2.5

- 2. If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number.
- c. Location of Parking. For purposes of this density bonus program, a development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking.

**6375 RESERVED UNITS.**

- a. Duration of Affordability. The applicant shall agree to, and the County shall ensure, the continued availability of the reserved units that qualified the housing development for a density bonus and other incentives for a period of at least 30 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- b. Unit Affordability Requirements.

1. Rental Units. Rents for the lower income and moderate income reserved units shall be set at an affordable rent as defined in Health and Safety Code Section 50053.
  2. Owner-occupied Units. Owner-occupied reserved 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.
1. 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.
  2. The County shall enforce an equity sharing agreement as specified in California Government Code Section 65915(c)(2).
- d. Location and Type of Reserved Units.
1. Location/Dispersion of Units. Reserved units shall be reasonably dispersed throughout the development where feasible and shall contain on average the same number of bedrooms as the market rate units.
  2. Phasing. If a project is to be phased, the reserved units shall be phased in the same proportion as the market rate units or phased in another sequence acceptable to the County. The reserved units shall be constructed concurrently with or prior to construction of the market rate units.
  3. Exterior Appearance. The exterior appearance and quality of the reserved units shall generally be similar to the market rate units, with exterior materials and improvements similar to and architecturally compatible with the market rate units in the development.

**Section 17.** Section 6514 of the San Diego County Zoning Ordinance is amended to read as follows:

**6514 PRE-APPLICATION CONFERENCE.**

Prior to submitting an application for a use permit for a mobilehome park, a prospective applicant should consult with the Department to obtain information and to inform the Department of the applicant's intentions. If requested by the applicant, the Department will schedule a conference to be attended by the applicant and representatives of the Departments of Planning, Public Works, Environmental Health, and other agencies as the Department considers necessary. Such a conference shall provide an opportunity to review the applicant's intended plan, and to identify potential requirements or subjects requiring particular attention prior to the applicant entering into binding commitments or incurring substantial expense in preparing plans, surveys, and other data. The applicant shall provide a map showing the proposed mobilehome park site, existing topography, adjoining road rights-of-way, and public access.

**Section 18.** Section 6516 of the San Diego County Zoning Ordinance is amended to read as follows:

**6516 GENERAL STANDARDS: STANDARD MOBILEHOME PARKS.**

- a. Minimum Area. A standard mobile home park shall be not less than five acres in area.
- b. Density. A standard mobilehome park shall conform to the applicable Density Regulations commencing at Section 4100 and at Section 6350.
- c. Reclassification. Prior to final construction approval for any new or expanded standard mobilehome park, the owner shall obtain a zone reclassification to a zone which includes

the RMH Use Regulations and the “A” Building Designator. Such reclassification requirement may be waived by the Director when a tentative subdivision map is filed concurrently with the related use permit application or for mobilehome parks approved pursuant to the Density Bonus Program (Section 6350 et seq.).

- d. **Factory-Built Housing.** Factory-built housing shall be attached to a permanent foundation system and conform to all other requirements of Section 18611 of the Health and Safety Code.

**Section 19.** Section 6534 of the San Diego County Zoning Ordinance is amended to read as follows:

**6534 PRE-APPLICATION CONFERENCE.**

Prior to submitting an application for a use permit for a mini-mobilehome park, a prospective applicant should consult with the Department to obtain information and to inform the Department of the applicant’s intentions. If requested by the applicant, the Department will schedule a conference to be attended by the applicant and representatives of the Departments of Planning, Public Works, Environmental Health, and other agencies as the Department considers necessary. Such a conference shall provide an opportunity to review the applicant’s intended plan, and to identify potential requirements or subjects requiring particular attention prior to the applicant entering into binding commitments or incurring substantial expense in preparing plans, surveys, and other data. The applicant shall provide a map showing the proposed mobilehome park site, existing topography, adjoining road rights-of-way, and public access.

**Section 20.** Section 7019 of the San Diego County Zoning Ordinance is amended to read as follows:

**7019 PERMITS AND APPROVALS TO BE RECORDED AND PROVIDE CONSTRUCTIVE NOTICE**

When the approval of any Administrative Permit, Density Bonus Permit, Variance, Site Plan, or Use Permit, or a modification to or minor deviation from any of the foregoing, has become final and effective, the Director shall cause a copy thereof to be filed with the San Diego County Recorder. The document to be recorded shall set forth the names of all owners of the property subject to the Administrative Permit, Density Bonus Permit, Variance, Site Plan, or Use Permit. The recorded document shall provide constructive notice to all purchasers, transferees, or other successors to the interest of the owners named, of the rights and obligations created by the Administrative Permit, Density Bonus Permit, Variance, Site Plan, or Use Permit.

**Section 21.** Section 7354 of the San Diego County Zoning Ordinance is amended to read as follows:

**7354 APPLICATION FOR THE GRANTING OF A USE PERMIT.**

An application for the granting of a use permit shall be made as follows:

- a. **Persons Eligible.** The following persons shall be eligible to apply for the granting of a use permit.
  - 1. A property owner, in which case the application shall be signed by all property owner(s) or agent(s), as provided in Section 7017.
  - 2. A lessee upon written approval of the property owner, in which case the application shall be signed by all property owner(s) or agent(s), as provided in Section 7017.
  - 3. A person authorized to exercise the power of eminent domain.
- b. **Required Documents.** The application shall be accompanied by the following documents:
  - 1. A list of the names of all persons having an interest in the application as well as the names of all persons having any ownership interest in the property involved. If

any person identified pursuant to this provision is a corporation or partnership, the names of all persons owning more than 10 percent of the shares in the corporation or owning any partnership interest in the partnership shall be listed. If any person identified pursuant to this provision is a non-profit organization or trust, the names of all persons serving as directors of the non-profit organization or as beneficiaries, trustees and trustors of the trust shall be listed.

2. Complete plans, a description of the property involved and a complete description of the proposed use. The complete plans shall include a plot plan drawn to scale showing all structures (existing and proposed). If the use permit will cover only a portion or portions of a lot or parcel, the plot plan shall include a measurable delineation of the area to which the use permit shall apply. That area shall include all land necessary for the proposed use, together with any open space, non-development areas, or other buffer areas which are necessary to enable making the required findings for use permit approval.
  3. Satisfactory evidence of the ability and intention of the applicant to proceed with actual construction work in accordance with the requested use permit within 6 months after it is granted.
  4. The appropriate environmental impact review document, as provided by Section 7610.
- c. Application Form, Filing and Fee. The application shall be made on the prescribed form and shall be filed with whomever has jurisdiction as provided by Section 7352, and shall be accompanied by the fee referenced in Section 7602.

**Section 22.** Section 7358 of the San Diego County Zoning Ordinance is amended to read as follows:

**7358 FINDINGS REQUIRED.**

Before any use permit may be granted or modified, it shall be found:

- a. That the location, size, design, and operating characteristics of the proposed use will be compatible with adjacent uses, residents, buildings, or structures, with consideration given to:
  1. Harmony in scale, bulk, coverage and density;
  2. The availability of public facilities, services and utilities;
  3. The harmful effect, if any, upon desirable neighborhood character;
  4. The generation of traffic and the capacity and physical character of surrounding streets;
  5. The suitability of the site for the type and intensity of use or development which is proposed; and to
  6. Any other relevant impact of the proposed use; and
- b. That the impacts, as described in paragraph "a" of this section, and the location of the proposed use will be consistent with the San Diego County General Plan.
- c. That the requirements of the California Environmental Quality Act have been complied with.

**Section 23.** Section 7359 of the San Diego County Zoning Ordinance is amended to read as follows:

**7359 FINDINGS REQUIRED FOR PARTICULAR USE PERMITS.**

Before any use permit for a "Specific Hazardous Waste Facility Project", as defined in Health and Safety Code Section 25199.1, may be granted or an existing facility modified, in addition to the

findings required by Section 7358, it shall be found that the proposed facility is in compliance with the following siting criteria documents of the County of San Diego Hazardous Waste Management Plan 1989-2000, all of which documents are on file with the Clerk of the Board of Supervisors as Exhibit A to Ordinance No. 8093 (N.S.):

- a. Section E, entitled "Local and Regional Facility Needs", of Chapter IX, entitled "Siting and Permitting of Hazardous Waste Facilities" (Pages IX-35 through IX-37);
- b. Appendix IX-A, entitled "Siting Criteria For Evaluating Hazardous Waste Management Facility Siting Proposals in San Diego County", and
- c. Appendix IX-B, entitled "'General Areas' For Siting Hazardous Waste Management Facilities."

**Section 24.** Sections 7400 through 7450, inclusive, are added to the San Diego County Zoning Ordinance to read as follows:

#### DENSITY BONUS PERMIT PROCEDURE

##### 7400 TITLE AND PURPOSE.

The provisions of Sections 7400 through 7449, inclusive, shall be known as Density Bonus Permit Procedures. The purpose of these provisions is to provide a review procedure for a density bonus permit or any associated incentive, waiver or modification of development standards as requested by an applicant pursuant to the Density Bonus Program at Zoning Ordinance Sections 6350 through 6399, except that these procedures shall not apply to the County Affordable Senior Housing Program at Section 6360 a.2.

##### 7402 APPLICABILITY.

The density bonus permit procedures shall be applied as required by the Zoning Ordinance, the General Plan, a Specific Plan, Tentative Subdivision Map, Tentative Parcel Map, or other discretionary development approval.

##### 7405 JURISDICTION.

- a. Applications for granting or modifying a density bonus permit, any associated incentive, or a waiver or modification of development standards that are filed concurrently with any other discretionary project application shall be under the same original jurisdiction as the other discretionary project application.
- b. If no other discretionary project application is required, a density bonus permit application shall be under the original jurisdiction of the Director of Planning and Land Use.

##### 7410 APPLICATION FOR THE GRANTING OF A DENSITY BONUS PERMIT.

- a. Persons Eligible. The following persons shall be eligible to apply:
  1. A property owner, in which case the application shall be signed by all property owners or agents, as provided in Section 7017.
  2. A lessee upon written approval of the property owner, in which case the application shall be signed by all property owners or agents, as provided in Section 7017.
- b. Required Documents.

The applicant shall submit an application for a density bonus permit in accordance with the following requirements:

1. Application. A density bonus permit application shall include the following information:
  - i. A description of the requested density bonus, incentive, waiver or modification.

- ii. Identification of the base project without the density bonus, number and location of all reserved units qualifying the project for a density bonus, level of affordability of all reserved units, and identification of the bonus units.
    - iii. In phased housing projects, for each construction phase, the density bonus application shall specify, at the same level of detail as the application for the residential development: the number, unit type, tenure, number of bedrooms and baths, approximate location, size, and design, construction and completion schedule of all reserved units, phasing of all reserved units in relation to market rate units, marketing plan, and intended rent or sale price and basis for calculation.
    - iv. If a density bonus or incentive is requested for a land donation, the application shall show the location of the land to be dedicated and provide evidence that each of the requirements for eligibility given above can be met.
    - v. If a density bonus or incentive is requested for a child care facility, the application shall show the location and square footage of the child care facility and provide evidence that the requirements for eligibility and the necessary qualifications can be met.
    - vi. If a mixed-use building or development is proposed, the application shall provide evidence that the eligibility requirements can be met.
  2. Financial Pro Forma. If the applicant requests one or more incentives under the Density Bonus Program, a financial pro forma shall be submitted that meets the requirements of this section. It shall demonstrate that the requested incentives result in identifiable, financially sufficient, and actual cost reductions that contribute significantly to the economic feasibility of the reserved units.

The financial pro forma shall address:

    - i. The actual cost reductions achieved through each incentive.
    - ii. That the actual cost reduction achieved through each incentive is needed to achieve the economic feasibility that allows the developer to provide the reserved units.
  3. An application for a density bonus permit shall be submitted prior to or concurrently with the submittal of the application, if any, for a related discretionary permit (e.g., a tentative map, parcel map, or design review). The application shall be processed concurrently with all other applications required for the development.
  4. No discretionary project application that includes an application for a density bonus permit shall be deemed complete unless a density bonus application is submitted, including a financial pro forma if required, that conforms to the requirements of this section.
  5. Upon submittal, the Director of Planning and Land Use shall determine if the density bonus permit application is complete and conforms to the provisions of this section.
- c. Application Form, Filing and Fee.
  1. An application for the granting or modifying of a density bonus permit shall be made on the prescribed form and shall be filed with the approving authority and shall be accompanied by the fee referenced in Section 7602.
  2. The cost of reviewing any required financial pro forma data submitted in support of a request for an incentive including, but not limited to, the cost to the County of

hiring a consultant to review the financial pro forma, shall be borne by the applicant.

3. The granting of a density bonus permit shall not be interpreted, in and of itself, to require a general plan amendment, coastal plan amendment, zoning amendment, or other discretionary approval.

#### 7420 FINDINGS RELATED TO INCENTIVES AND DEVELOPMENT STANDARDS.

##### a. Incentives.

A requested incentive shall be approved unless the approval authority makes a written finding to deny the incentive, based upon substantial evidence, of at least one of the following:

1. The incentive is not required in order to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5, or for rents, as defined in Health and Safety Code Section 50053, for the reserved units.
2. The 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 or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low and moderate income households.
3. The incentive requested in the application would be contrary to state or federal law.
4. The applicant has failed to submit required information or does not qualify for the requested incentive.

##### b. Waivers or Reductions of Development Standards.

A proposal by the permit applicant to waive or reduce development standards that have the effect of physically precluding the construction of a development at the densities or with the incentives permitted by the Density Bonus Program shall be approved unless the approval authority makes a written finding to deny the waiver or reduction, based upon substantial evidence, of one of the following:

1. The development standard does not have the effect of physically precluding construction at the densities or with the incentives permitted by the Density Bonus Program.
2. The waiver or reduction of the development standard 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.
3. The waiver or reduction of the development standard would have a specific adverse impact on any real property that is listed in the California Register of Historical Resources.
4. The waiver or reduction of the development standard would be contrary to state or federal law.
5. The applicant has failed to submit required information or does not qualify for the requested waiver or reduction of development standards.

#### 7430 DENSITY BONUS HOUSING AGREEMENT.

The provisions contained within a density bonus housing agreement shall be enforceable by the County, and a violation of the agreement shall constitute a violation of this Ordinance.

- a. Agreement Required. The applicant shall enter into a contract with the Department of Housing and Community Development, to the satisfaction of the Director of Planning and Land Use, agreeing to the specific terms and conditions of the Density Bonus Program and to periodic inspections of the housing by County employees. The property owner shall execute a density bonus housing agreement prior to any of the following:
  1. A ministerial action by the County with regard to the project.
  2. A discretionary permit issued in conjunction with a density bonus application, including tentative maps. The permit shall contain a condition detailing the actions required for compliance with the Density Bonus Program and with the terms of the density bonus application.
  3. Each final map or parcel map shall bear a note indicating the method of compliance with the requirements of the Density Bonus Program and stating that an affordable housing agreement shall be recorded prior to issuance of a building permit with respect to each parcel created by the map.
  4. No building permit shall be issued for a residential unit until the applicant has demonstrated compliance with the Density Bonus Program through recordation of an affordable housing agreement.
- b. 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 created by the final or parcel map at the County Recorder's Office.
  2. The approval and recordation shall take place at the same time as the final or parcel map or, where a map is not being processed, before issuance of a building permit.
  3. The agreement shall be binding on all future owners, developers, and/or successors-in-interest.

#### 7435 APPEAL.

- a. Any decision regarding a density bonus application under the original jurisdiction of the Director of Planning and Land Use may be appealed to the Planning Commission. Unless any concurrent discretionary permit is appealable to the Board of Supervisors, the decision of the Planning Commission shall be final and effective immediately.
- b. Any decision regarding a density bonus application under the original jurisdiction of the Planning Commission may be appealed to the Board of Supervisors.

#### 7440. EXPIRATION.

- a. If not issued in conjunction with the approval of a subdivision map pursuant to the County Subdivision Ordinance, a density bonus permit shall expire two years after its issuance unless construction and/or use of the property in reliance on the permit has commenced prior to its expiration; provided, however, that the period within which such construction and/or use must be commenced may be extended as provided in this section.
- b. If the density bonus permit is issued in conjunction with the approval of a subdivision map pursuant to the County Subdivision Ordinance, the density bonus permit shall remain in full force and effect for the duration of the tentative approval for that subdivision map and, if the subdivision map does not receive final approval, expire upon expiration of the tentative approval. If the subdivision map receives final approval, the density bonus permit shall expire two years after recordation of the final or parcel map unless construction and/or use of the property in reliance on the permit has commenced prior to its expiration; provided, however, that the period within which such construction and/or use must be commenced may be extended as provided in this section.

- c. If prior to the expiration of a density bonus permit, the applicant files a written application with the Department of Planning and Land Use for an extension of time, the period within which construction or use of the property in reliance on the density bonus permit must be commenced may be extended by the Director at any time within 90 days of the date of expiration. The Director may grant one or more such extensions not to exceed a total of two years, subject to specified conditions and upon a finding that unusual circumstances have delayed such completion, creating a substantial hardship on the applicant.

7445 DENSITY BONUS PERMIT TO BE RECORDED AND PROVIDE CONSTRUCTIVE NOTICE

Upon the approval of a density bonus permit becoming final and effective, the Director shall cause a copy thereof to be filed with the San Diego County Recorder. The permit shall set forth the names of all owners of the property subject to the permit. The recording of the permit shall provide constructive notice to all purchasers, transferees, or other successors to the interests of the owners named in the permit, of the rights and obligations created by the permit.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 4<sup>th</sup> day of August, 2010.