

ORDINANCE NO. 3428

AN ORDINANCE AMENDING THE LAND USE ORDINANCE – TITLE 23 OF THE COUNTY CODE, RELATING TO THE DENSITY BONUS ORDINANCE

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1. Section 23.04.090 (Density Bonus Ordinance) of Title 23 of the San Luis Obispo County Code, is hereby amended to read as follows:

CHAPTER 23.04 – SITE DESIGN STANDARDS

23.04.090 - Affordable Housing Density Bonus

An application that satisfies the requirements of this section and State Density Bonus Law for a qualifying housing project may be eligible to receive a density bonus and other incentives, such as concessions and adjusted parking ratios. A housing project approved to receive a density bonus may establish additional housing units over the standard maximum residential density allowed by ordinance, including the standard maximum residential density set by Planning Area Standards. Qualifying housing projects may include, but are not limited to, housing projects that contain one of the following: (1) rental or ownership housing units or vacant lots restricted to very low, lower, or moderate income residents, (2) housing units for transitional foster youth, disabled veterans, or homeless persons, with rents restricted at very low income level, (3) housing units restricted to senior citizens, and 4) mixed-use development. The qualifying housing units shall be deed-restricted in accordance with the approval of the project.

a. References to State Law. This section references California Government Code 65915 et. seq., Chapter 4.3 (Density Bonuses and Other Incentives), Division 1, Title 7 of the State of California Government Code, which shall be referenced herein as State Density Bonus Law. All references to State Density Bonus Law shall refer to the statute, as it may be amended. Where there is conflict between the State Density Bonus Law and this ordinance, the State Density Bonus Law shall prevail.

b. Application Submittal.

(1) Applicant Submittal. For the purpose of this chapter, an application for a density bonus shall mean an application to request density bonus, adjusted parking ratios, incentives or concessions, waivers or reductions of development standards, or any combination thereof, as prescribed in State Density Bonus Law. The applicant requesting a density bonus shall submit a residential subdivision application, a Minor Use Permit application, and/or a Conditional Use Permit application in conjunction with the application for the proposed development. A Conditional Use Permit application shall be submitted if:

(i) The application is for a density bonus greater than the allowable density bonus described in State Density Bonus Law;

- (ii) The proposed development requires a Conditional Use Permit; or
- (iii) A Conditional Use Permit is otherwise required by this Title.

(2) Application Submittal Requirements. In addition to the permit submittal requirements for the proposed development, an application requesting a density bonus shall include the following items:

- (i) The development project shall have five or more dwelling units, exclusive of any density bonus units.
- (ii) Density Bonus Guide. Any information and supplement documentation listed in the Guide is required unless otherwise noted as optional
- (iii) Include citations of the state and county density bonus codes upon which the density bonus, adjusted parking ratios, incentives or concessions, and waivers or reductions of development standards is requested; and explanations and supporting evidence demonstrating how the proposed project satisfies the applicable standards and criteria.
- (iv) Include all documentation the applicant would like to rely on to demonstrate support for the requested incentives and concessions, waivers and reductions of development standards. The requests shall conform with the requirements of Section E below (Decisions and Findings).
- (v) The application for an incentive, concession, or a waiver or reduction of development standards must also qualify for a density bonus.

(3) Concurrent Processing. The review of the density bonus application shall occur concurrently with all other entitlement applications submitted on behalf of the development requesting the density bonus benefits.

c. Determination of Eligibility.

(1) Notice of Determination of Eligibility. If the Planning and Building Department deems the application to be complete it shall provide the applicant with a determination of the following, based on the State Density Bonus Law:

- (i) The amount of density bonus for which the project is eligible.
- (ii) The parking ratio for which the project is eligible.
- (iii) The incentives, concessions, and waivers or reductions of development standards for which the project is eligible. Before a determination pursuant to this subsection can be made, the applicant shall submit sufficient documentation to establish eligibility for a requested density bonus, for any requested incentives or concessions, and for any requested waivers or reductions of development standards.

a.—(2) Project based on Determination of Eligibility. The project’s density bonus amount, parking ratios, incentives, concessions, and waivers or reductions of development standards shall be based on the determination of eligibility made at the time the application is deemed complete. However, the Planning and Building Department or the Review Authority shall adjust the amount of density bonus, parking ratios, incentives, concessions and waivers or reductions of development standards based on any changes made to the project prior to permit approval. The applicant may choose to accept less than what is allowed by the project determination. The County may choose to award the project an equal or greater amount than allowed by the State Density Bonus Law.

d. Project Design.

(1) Location and Dispersal of Dwelling Units. Deed-restricted dwelling units shall be dispersed throughout the development and shall not be clustered, unless the Review Authority approves a cluster design for such units.

(2) Number of Bedrooms. The average number of bedrooms of the deed-restricted dwelling units shall equal or exceed the average number of bedrooms of the market-rate dwelling units.

(3) Exterior Appearance and Quality of Materials. The exterior appearance and quality of materials of the deed-restricted dwelling units shall be the same or similar to the market-rate dwelling units.

(4) Unit Availability and Project Phasing. Deed restricted dwelling units shall be completed and available for occupancy prior to or concurrently with market rate dwelling units. If the project is to be developed in phases, then each phase shall contain a share of the total number of deed restricted units that is proportional to the size of each phase.

~~(4)~~(5) Land Donation. The timing and provision of land donation(s) shall comply with California Government Code 65915(g).

b.e. Decision and Findings.

(1) Findings for Density Bonus and Adjusted Parking Ratios. The Review Authority shall approve or approve with conditions a request for density bonus and adjusted parking ratios if it finds that:

(i) The proposed project is eligible for the requested density bonus and adjusted parking ratios pursuant to State Density Bonus Law; and

(ii) The proposed project is consistent with the applicable standards and criteria found in State Density Bonus Law.

(iii) Where a development project may qualify for other density bonuses in addition to those provided by this section (e.g. through Section 23.04.096 – Inclusionary Housing, or Section 23.04.036 – Cluster Division) only one such bonus may be used.

(2) Findings for Incentives and Concessions. The Review Authority shall approve or approve with conditions a request for incentives or concessions, unless it makes any of the following findings based upon substantial evidence:

(i) The incentive or concession does not result in identifiable and actual cost reductions, consistent with California Government Code Section 65915(k):

(1) to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5, or

(2) for rents for the targeted units to be set as specified in California Government Code Section 65915(c).

(ii) The incentive or concession would have a specific, adverse impact, as defined in California Government Code Section 65589.5(d)(2), upon public health and safety, 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-income and moderate-income households.

(iii) The incentive or concession would be contrary to state or federal law.

(3) Findings for Waivers and Reductions of Development Standards. The Review Authority shall approve or approve with conditions a request for waivers or reductions of development standards, unless it makes any of the following findings:

(i) The development standard(s) are not preventing the construction of the proposed density bonus project at the densities or with the incentives permitted under this Section.

(ii) The waiver or reduction of development standards would have a specific, adverse impact, as defined in California 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.

(iii) The waiver or reduction of development standards would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(iv) The waiver or reduction of development standards would be contrary to state or federal law.

(4) Findings for a Density Bonus Greater than allowed by the State Density Bonus Law. The Review Authority may, at its own discretion, approve or approve with conditions a

request for density bonus greater than the ratio of density bonus units described in State Density Bonus Law, provided that the Review Authority finds that:

- (i) The proposed project provides deed-restricted affordable dwelling units beyond the percentage of units prescribed in State Density Bonus Law.
- (ii) The additional density bonus is proportional to the increase in deed-restricted affordable dwelling units provided beyond the minimum percentages listed in State Density Bonus Law.
- (iii) The proposed project otherwise meets the applicable standards and criteria.

~~(1) (5) (5)~~ **Agreements.** The applicant shall enter into an affordable housing agreement with the County and record a deed restriction on the property. The agreement and deed restriction shall require the affordability of the designated dwellings units be maintained and enforced in accordance with the approved project. The agreement and deed restriction shall be in a form prepared by the County and be recorded by the applicant with the final subdivision map or, where no subdivision map is required, prior to issuance of a building permit for any structure on the project site. The agreement and deed restriction shall incorporate the long-term affordability provisions of the State Density Bonus Law and Section 23.04.094 – Housing Affordability Standards. When applicable, ownership units shall also be subject to an equity-sharing agreement pursuant to the State Density Bonus Law. Where allowable by law, the agreement may require payment of a fee to cover the cost of monitoring compliance with the agreement.

(5)

~~Within the Residential Single Family and Residential Multi Family land use categories, an applicant may request a density bonus and other incentives in return for agreeing to construct and sell or rent affordable housing pursuant to Government Code Section 65915, as provided in this section. Such housing developments may include: vacant subdivided lots for sale; lots developed with single family dwellings; or, where allowed, lots developed with multi-family units. However, the affordable housing units required under this section must consist of completed single-family or multi-family dwellings. Standards for maximum rents, sales prices and long-term affordability of the designated affordable housing units provided pursuant to this section are contained in Section 23.04.094 of this title. The purpose of this section is to make the provision of affordable housing more attractive to the private developer while retaining good design and neighborhood character.~~

~~a. — **Permit requirement:** A project proposing an affordable housing density bonus shall be subject to Development Plan approval as set forth in Section 23.02.034 (Development Plan), except that:~~

- ~~(1) — The purpose of the Development Plan review shall be to evaluate the entire project with respect to its compliance with the provisions of this section and Section 23.04.094, and with the findings specified by Section 23.02.034c(4).~~

~~(2) — The Development Plan approval process in this case does not include the discretion to limit or disallow the development bonus provided by this section, but does include the authority to approve or disapprove the overall project, or to approve the project subject to conditions that do not affect the development bonus.~~

~~b. — **Determining base density:** For purposes of determining inclusionary housing requirements and density bonuses pursuant to this Section, the concept of base density is applied. Base density is the theoretical maximum number of dwellings, or in the case of a residential land division, the theoretical maximum number of residential parcels that may be allowable on the potentially developable portion of a given site under the county code, not including any density bonuses as provided under this title or state statute. For purposes of calculating base density, any area of land on a given site that is not potentially developable due to hazards or other environmental and resource factors (including, but not limited to, areas of sensitive habitat, steep slopes, significant public views, public accessways, or geologic instability) shall not be considered potentially developable and shall be excluded from the base density calculation (i.e., base density shall be determined based only on the potentially developable portion of a given site). Establishing the base density is necessary for purposes of determining whether a housing development is eligible for the density bonus, how many affordable dwellings must be provided in exchange for the density bonus, and the total number of dwellings that may be allowable including the density bonus. However, base density as determined under this section does not affect the provisions of the county code for review of proposed developments or land divisions which are not proposed to include the density bonus provided under this section, and such developments or land divisions may not necessarily be approved by the county at a density equal to this base density. Base density is determined as follows:~~

~~(1) — **Residential Multi-Family category:** The base density for the potentially developable portion of the site in the Residential Multi-Family land-use category is the number of multi-family dwellings that are allowable on the site pursuant to Section 23.04.084 (Multi-Family Dwellings).~~

~~(2) — **Residential Single Family category:** The base density for the potentially developable portion of the site in the Residential Single Family land-use category is equal to the total usable site area divided by the applicable minimum parcel size pursuant to subsections 23.04.028a, b and c, except that average slope for the entire site may be used for the slope test under subsection 23.04.028b instead of the average slope for each proposed parcel.~~

~~c. — **Eligibility for bonus and allowable density including bonus:** A proposed residential project must satisfy the following standards in order to qualify for a density bonus pursuant to this section:~~

~~(1) — **Project size:** Housing developments eligible for density bonus under this section must include five or more dwelling units, not including the bonus units. Whether a housing development includes five or more dwelling units shall be determined as provided under Subsection b of this section.~~

~~(2) — **Type of eligible projects:** Housing units developed for sale or rental; but not including transient housing, such as time-share and hotel/motel projects.~~

~~(3) — **Eligible buyers and renters:** The project shall be administered so that affordable units may be purchased or rented only by families of very low income as defined in Section 50105 of the California Health and Safety Code; lower-income as defined in Section 50079.5 of the California Health and Safety Code; or senior citizens as defined in Section 51.3 of the California Civil Code, if they also qualify as low or moderate income as defined in Section 50093 of the California Health and Safety Code.~~

~~(4) — **Project location:** The site must be within an urban or village area and in either the Residential Single-Family or Residential Multi-Family land-use categories.~~

~~(5) — **Amount of affordable housing:** In order to be eligible for a density bonus under this section, the project must satisfy the provisions of Government Code Section 65915 by providing affordable housing pursuant to Section 23.04.094 of this title in an amount equal to or exceeding those listed below. The density bonus units are not included when computing the ten, twenty or fifty percent of the base density.~~

~~(i) — Ten percent of the base density as determined under Subsection b of this section for families of very low income; or~~

~~(ii) — Twenty percent of the base density as determined under Subsection b of this section for families of lower income; or~~

~~(iii) — Fifty percent of the base density as determined under Subsection b of this section for senior citizens of low or moderate income.~~

~~(6) — **Continued availability of affordable housing:** Affordable housing units provided under this section shall be subject to the long-term housing affordability provisions described in Section 23.04.094 of this title.~~

~~(i) — The additional increase in allowable density (above 25 percent) as described in Subsection e of this section;~~

~~(ii) — A reduction in the open area required for cluster divisions under Section 23.04.036d of this title pursuant to Subsection g(8) of this section;~~

~~(iii) — Any financial assistance that the county provides directly or administers on behalf of state or federal funding programs;~~

~~(iv) — A concession or incentive described in Government Code Section 65915(h) that is suitable to the project site and the project.~~

~~(7) — **Site and neighborhood characteristics:** The project site and vicinity shall be determined by the Review Authority to be capable of accommodating the allowable density bonus without significant adverse effects on the environmental characteristics of the site or the character and public service facilities of the neighborhood and community.~~

~~d. — **Density bonus and other incentives:** The developer of a project eligible under this section shall be granted a density bonus as calculated in Subsection e of this section or other incentives of equivalent financial value based on land cost per dwelling unit as determined by the Review Authority.~~

~~e. — **Determining allowable density with bonus:**~~

~~(1) — **Residential Single Family land use category:** The maximum allowable density is determined by multiplying the base density as determined under Subsection b of this section by a factor of 1.35 if the affordable housing units are proposed to be provided on the site proposed to receive a density bonus, or a factor of 1.30 if the affordable housing units are proposed to be provided on a site separate from that proposed to receive a density bonus. The minimum parcel size permitted under Section 23.04.028 of this title in the Residential Single Family land use category may be decreased by the same percentage factor that is used to increase the number of housing units. However, where an applicant has requested only a 25 percent increase in density, and no other incentives or concessions will be granted by the county, the minimum parcel size permitted under Section 23.04.028 may be decreased by only 25 percent. Where a proposed project may otherwise qualify for other density bonuses in addition to the provisions of this section (e.g. through the cluster division provisions of Section 23.04.036 of this title) only one such bonus may be used.~~

~~(2) — **Residential Multi Family land use category:** The maximum allowable density is determined by multiplying the base density as determined under Subsection b of this section by a factor of 1.35 if the affordable housing units are proposed to be provided on the site proposed to receive a density bonus, or a factor of 1.30 if the affordable housing units are proposed to be provided on a site separate from that proposed to receive a density bonus. The maximum floor area permitted under Section 23.04.084 of this title in the Residential Multi Family land use category may be increased by the same percentage factor that is used to increase the number of housing units. However, where an applicant has requested only a 25 percent increase in density, and no other incentives or concessions will be granted by the county, the maximum floor area permitted under Section 23.04.084 can be increased by only 25 percent.~~

~~f. — **Location and timing for provision of affordable units:** Affordable housing units provided to qualify a project to receive a density bonus under this section need not be located within the same site as the bonus units, but they must be located within the same urban or village area. Also, the affordable housing units must be completed, and their final building inspection granted by the Building Official verifying completion of the structures~~

and related improvements, before the Building Official shall grant final building inspection for the market rate units, except where the developer has posted a performance bond or entered into an alternative agreement ensuring provision of the affordable housing units, subject to approval by the Office of County Counsel and the Director of the County Department of Planning and Building.

~~g. — **Site design standards:** The following minimum site design standards apply to projects consisting of single family dwellings on individual lots, receiving a density bonus under this section and located in the Residential Single Family or Residential Multi Family land use categories.~~

~~(1) — **Lot width:** The minimum lot width for each parcel shall be 35 feet measured at the front setback.~~

~~(2) — **Front setback:** The minimum front setback shall be 18 feet, except for cluster divisions authorized under Section 23.04.036 of this title.~~

~~(3) — **Side setbacks:** The minimum combined side setbacks shall be 10 feet, and structures shall be separated by at least 10 feet except for structures sharing common walls.~~

~~(4) — **Rear setback:** The minimum rear setback shall be 10 feet.~~

~~(5) — **Off street parking:** The minimum average number of off street parking spaces per dwelling shall be two spaces. At least one of the two spaces shall be within a garage, unless at least 50 square feet of enclosed utility storage space is provided.~~

~~(6) — **Site coverage:** The coverage of each residential parcel by structures shall not exceed 40 percent of the total area of the parcel, except for cluster divisions authorized under Section 23.04.036 of this title, in which case the structural coverage shall not exceed 70 percent of the total area of each parcel.~~

~~(7) — **Private open area:** Each residential parcel shall include within its own boundaries a minimum of 10 percent, but no less than 400 square feet, of the total area of the parcel as usable private open area. Usable private open area is defined as an area within a residential parcel enclosed by walls or fences, not encumbered by structures, driveways, parking spaces or slopes greater than 15 percent, not less than 10 feet in width, and visible and accessible from the kitchen, dining room or living room of the dwelling.~~

~~(8) — **Common open area:** Common open area is not required for projects receiving a density bonus under this section, except for cluster divisions. Open area requirements of this title for cluster divisions may be reduced by up to 50% where feasible given the physical characteristics of the site.~~

SECTION 2: If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 3: Before the expiration of 15 days after the adoption of this ordinance by the San Luis Obispo County Board of Supervisors, it shall be published once in a newspaper of general circulation published in the County of San Luis Obispo, State of California, together with the names of the members of the Board of Supervisors voting for and against the ordinance.

SECTION 4: This Ordinance shall become effective thirty (30) days after its enactment by the Board of Supervisors.

SECTION 5: These ordinance amendments are not subject to the California Environmental Quality Act pursuant to CEQA Guidelines §15061(b)(3) – General Rule Exemption – due to the general rule that an action is not subject to CEQA where it can be seen with certainty that there is no possibility that there will be a significant effect on the environment. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption]. This project qualifies for the general rule exemption because:

1. The proposed amendments to the Land Use Ordinance and Coastal Zone Land Use Ordinance help to implement the provisions of California Government Code Section 65915 (Density Bonuses and Other Incentives) by providing incentives and bonus units that may result in the inclusion of affordable housing within residential development projects. The proposed amendments do not involve the addition of any new uses in the County that are not already currently allowed. The proposed amendments are intended to ensure compliance with the permitting requirements of the California Government Code Section 65915 – Density Bonuses and Other Incentives. Individual projects using the density bonus ordinance must receive discretionary permit approval and CEQA clearance.

SECTION 6: In accordance with Government Code Section 25131, after reading the title of this Ordinance, further reading of the Ordinance in full is waived.

SECTION 7: This ordinance shall become operative immediately only upon certification of the Amendments by the California Coastal Commission, as may be certified with suggested modifications by the Coastal Commission and accepted and agreed to by the Board of Supervisors.

RECOMMENDED at a hearing of the San Luis Obispo County Planning Commission held on the 27th day of August, 2020, and PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 17th day of November, 2020, by the following roll call to vote, to wit:

AYES: Supervisors John Peschong, Bruce S. Gibson, Debbie Arnold and
Chairperson Lynn Compton
NOES: None
ABSENT: None
ABSTAINING: None



Lynn Compton
Chairperson of the Board of Supervisors
San Luis Obispo County, State of California

ATTEST:

WADE HORTON
Ex-Officio Clerk of the Board of Supervisors
San Luis Obispo County, State of California

By: T'Ana Christiansen
Deputy Clerk

