



# City of Los Banos

At the Crossroads of California

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## AGENDA

### PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS  
520 J Street  
Los Banos, California

**WEDNESDAY, SEPTEMBER 11, 2019**

*If you require special assistance to attend or participate in this meeting, please call the Planning Secretary @ (209) 827-7000 ext. 2431 at least 48 hours prior to the meeting.*

*The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.*

*Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria del Departamento de Planificación al (209) 827-7000 ext. 2431 a lo menos de 48 horas previas de la junta.*

*La Ciudad de Los Banos cumple con la Acta de Americanos con Deshabilidad (ADA) de 1990.*

*Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the meeting and in the Community & Economic Development Department's office located at City Hall, 520 J Street, Los Banos, California during normal business hours.*

*In addition, such writings and documents may be posted on the City's website at [www.losbanos.org](http://www.losbanos.org).*

*Cualquier escritura o los documentos proporcionaron a una mayoría del Comisión de Planificación con respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina del Departamento de Comunidad y Desarrollo Economico del City Hall, 520 J Street, Los Banos, California durante horas de oficina normales.*

*Además, tales escrituras y los documentos pueden ser anunciados en el website de la Ciudad en [www.losbanos.org](http://www.losbanos.org).*

1. CALL TO ORDER **7:00 PM**
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL: (Planning Commission Members)  
Cates \_\_, Dees \_\_, Giuliani \_\_, Higby \_\_, Toscano \_\_

4. APPROVAL OF AGENDA

*Recommendation: Approve the agenda as submitted.*

5. CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF AUGUST 28, 2019

*Recommendation: Approve the minutes as submitted.*

6. PUBLIC FORUM: Members of the public may address the Commission on any item of public interest that is within the jurisdiction of the Commission, including agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation.

7. PUBLIC HEARINGS: If You Challenge the Proposed Action as Described herein in Court, You May Be Limited to Raising Only Those Issues You or Someone Else Raised at the Public Hearing Described herein, or in Written Correspondence, Delivered to the City at, or Prior to, the Public Hearing.

A. Public Hearing – To Consider a Categorical Exemption from the California Environmental Quality Act (CEQA) and a Mobile Food Vendor Permit #2019-07 to Allow the Operation of a Mobile Food Vending Vehicle on Private Commercial Property for Jana Nairn dba The Tri-Tipery Located within the Highway-Commercial Zoning District at 1155 Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 026-280-007.

1) Planning Commission Resolution No. 2019-18 – Approving the Project to be Categorically Exempt from the California Environmental Quality Act (CEQA) Pursuant to Section 15311, Accessory Structures, and Approving Mobile Food Vendor Permit #2019-07 for the Operation of a Mobile Food Vending Unit to Vend on Private Commercial Property Located at 1155 Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 026-280-007.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

B. Public Hearing – To Consider and Make a Recommendation to the Los Banos City Council to Amend Chapter 3, Title 9, Article 34 of the Los Banos Municipal Code Related to Density Bonus.

1) Planning Commission Resolution No. 2019-19 – Recommending to the City Council Adoption of an Ordinance of the City Council of the City of Los Banos Amending and Restating Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code Regarding Density Bonuses and Other Affordable Housing Development Incentives.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

8. COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT
9. COMMISSIONER REPORTS
  - A. Cates
  - B. Dees
  - C. Giuliani
  - D. Higby
  - E. Toscano
10. ADJOURNMENT.
  - A. Adjourn to 5:00 p.m., Wednesday, September 25, 2019 at the Los Banos Community Center located at 645 Seventh Street, Los Banos, California to Conduct a Joint Study Session with the City Council Regarding Los Banos Downtown Strategic Plan.

### **APPEAL RIGHTS AND FILING PROCEDURES**

Any person dissatisfied with an act or determination of the Planning Commission may appeal such act or determination to the Planning Commission by filing written notice with the Planning Commission Secretary not later than five (5) business days (excluding holidays) after the day on which the act or determination was made. An appeal must state the act or determination which is being appealed, the identity of the applicant and his/her interest in the matter, and set forth in concise statement(s) the reasons which render the Commission's decision unjustified or inappropriate. (Los Banos Municipal Code Section 9-3.2326)

Concerning an action taken by the Planning Commission related to Chapter 2 Articles 1 through 17 of the Los Banos Municipal Code "Subdivisions", if a subdivider or other affected property owner is dissatisfied with any action of the Commission with respect to a tentative map or the nature and extent of improvements recommended or required he/she may within fifteen (15) days after such action appeal to the Planning Commission Secretary for a public hearing on the matter. An appeal must state the action being appealed, identify the agenda item by agency number or project title, and set forth in concise statement(s) the reasons for the appeal. (Los Banos Municipal Code Sections 9-2.807)

Appeals must be in writing and include the appellant's name and address and original signature. A filing fee of \$150.00 must accompany the notice of appeal.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.

  
Sandra Benetti, Planning Technician

Dated this 6<sup>th</sup> day of September 2019



**CITY OF LOS BANOS  
PLANNING COMMISSION MEETING MINUTES  
AUGUST 28, 2019**

*ACTION MINUTES – These minutes are prepared to depict action taken for agenda items presented to the Planning Commission. For greater detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.*

**CALL TO ORDER:** Chairperson Cates called the Planning Commission Meeting to order at the hour of 7:00 p.m.

**PLEDGE OF ALLEGIANCE:** The pledge of allegiance was led by Commissioner Giuliani.

**ROLL CALL – MEMBERS OF THE PLANNING COMMISSION PRESENT:** Planning Commission Members John Cates, Mona Giuliani, Thomas Higby III, and Susan Toscano; David Dees absent.

**STAFF MEMBERS PRESENT:** City Attorney William A. Vaughn, Community & Economic Development Director Stacy Elms, Associate Planner Rudy Luquin, and Planning Technician Sandra Benetti.

**CONSIDERATION OF APPROVAL OF AGENDA.** Motion by Giuliani, seconded by Higby to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF JULY 10, 2019.** Motion by Giuliani, seconded by Higby to approve the minutes as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE ADJOURNED CITY COUNCIL/PLANNING COMMISSION MEETING OF AUGUST 14, 2019.** Motion by Giuliani, seconded by Higby to approve the minutes as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE PLANNING COMMISSION MEMBERS ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE.**

Chairperson Cates opened the public forum. No one came forward to speak and the public forum was closed.

Commissioner Toscano stated that she was unsure if she had a conflict for the upcoming item because she works at 549 N. Mercey Springs Road near the project site.

City Attorney Vaughn inquired if Commissioner Toscano owned the property where she worked, asked if they were a source of income to her, and asked she was a source of income to them.

Commissioner Toscano responded no to each question.

City Attorney Vaughn stated that there is no conflict and she may participate.

**PUBLIC HEARING – TO CONSIDER A SITE PLAN REVIEW #2019-03 FOR THE DEVELOPMENT OF ONE (1) COMMERCIAL STRUCTURE TOTALING 5,156 SQUARE FEET WITH SITE IMPROVEMENTS WITHIN THE GENERAL-COMMERCIAL ZONING DISTRICT AND A CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15332 IN-FILL DEVELOPMENT PROJECTS LOCATED AT 1101 F STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 025-152-009.**

Associate Planner Luquin presented the staff report, which included a PowerPoint presentation, and distributed revised elevations and floor plan that was received today.

Commissioner Giuliani spoke of her appreciation for the added hallway and landscaping.

Chairperson Cates opened the public hearing. No one came forward to speak and the public hearing was closed.

Motion by Higby, seconded by Giuliani to adopt Planning Commission Resolution No. 2019-16 – Approving Site Plan Review #2019-03 for the Development of One (1) 5,156 Square Foot Commercial Structure Along with Site Improvements within the General-Commercial Zoning District and a Categorical Exemption from the California Environmental Quality Act Pursuant to Section 15332, In-Fill Development Projects Located at 1101 F Street, More Specifically Identified as Assessor’s Parcel Number: 025-152-009. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**PUBLIC HEARING – TO CONSIDER A CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND A MOBILE FOOD VENDOR PERMIT #2019-06 TO ALLOW THE OPERATION OF A MOBILE FOOD VENDING VEHICLE ON PRIVATE PROPERTY FOR KENNETH LAMBERT DBA BIGGINS TEXAS BBQ LOCATED WITHIN THE PUBLIC-FACILITIES ZONING DISTRICT AT 520 WEST I STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 027-032-007.**

Associate Planner Luquin presented the staff report, which included a PowerPoint presentation.

Commissioner Giuliani inquired about parking, accessibility, and hours of operation.

Associate Planner Luquin responded that the applicant has already received a Temporary Mobile Food Vendor Permit at this location and no concerns have been brought to staff's attention, how the parking lot is in use and often at full capacity, and hours of operation will be Friday thru Sunday from 11:00 a.m. to 7:00 p.m.

Chairperson Cates opened the public hearing. No one came forward to speak and the public hearing was closed.

Commissioner Giuliani inquired about the business operations.

Kenneth Lambert, applicant, spoke of how he started out at the street fairs and tomato festival and had requests for him to open up a restaurant, how he has a different style of barbecue, how he is from Texas and brings Texan-style food, how he also has specialties, and wants to bring his style to the community.

Commissioner Giuliani inquired if he operated at other locations or if there will be other locations in the future.

Mr. Lambert responded that he has attempted to find other locations but it's been difficult.

Motion by Higby, seconded by Giuliani to adopt Planning Commission Resolution No. 2019-17 – Approving the Project to Be Categorically Exempt from the California Environmental Quality Act Pursuant to Section 15311, Accessory Structures, and Approving Mobile Food Vendor Permit #2019-06 for the Operation of a Mobile Food Vending Unit to Vend on Private Property Located at 520 West I Street, More Specifically Identified as Assessor's Parcel Number: 027-032-007. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**DESIGN REVIEW STUDY SESSION – ESTABLISHMENT OF ONE (1) MODULAR BUILDING TOTALLING 2,208 SQUARE FEET FOR A MULTI-PURPOSE ROOM INCLUDING CLASS SPACE AND AN ASSEMBLY/SOCIAL HALL FOR FIRST BAPTIST CHURCH LOCATED IN THE LOW-DENSITY RESIDENTIAL (R-1) ZONING DISTRICT ADJACENT TO 819 D STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS: 025-092-002, 003, 004.** Associate Planner Luquin presented the staff report, which included a PowerPoint presentation.

Ramon Sanchez, California Shine & Construction, was present to answer questions.

Roy Mitchell, First Baptist Church, was present to answer questions.

There was discussion among Commissioners, staff, and the applicant regarding architecture including design, color, façade, stucco to match the church, and temporary partitions within the building.

Chairperson Cates suggested that the applicant consider the matching the exterior design color and materials to the existing church building, suggested breaking up the massing, and inquired about parking.

Community & Economic Development Director Elms spoke of parking being based on whether it's a fellowship hall or a classroom and stated that the parking requirements are different for those uses.

There was discussion among Commissioners, staff, and the applicant regarding lighting including how they will have to meet city standards.

There was discussion among Commissioners, staff, and the applicant regarding landscaping including the type of vegetation and fencing.

Informational item only, no action taken.

### **COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR REPORT.**

Community & Economic Development Director Elms reported that there was a City Council request made at the last City Council meeting to analyze a Planning Commission attendance policy and reduce the number of seats from 7 to 5 members, how this item will be brought to the City Council on September 4<sup>th</sup> agenda for discussion, how staff conducted research and will be recommending by-district representation and moving down to 5 members, how she will report back to Planning Commission after that City Council meeting, how the Community & Economic Development Department will have a part-time employee that will be starting on September 3<sup>rd</sup>, how they probably won't see the employee at Planning Commission meetings, but will likely see her at the Community & Economic Development window at City Hall.

### **PLANNING COMMISSION MEMBER REPORTS.**

**CATES:** Thanked staff for their work.

**DEES:** Absent.

**GIULIANI:** Thanked staff for their work and was pleased with the City Council/Planning Commission study session that took place on August 14, 2019.

**HIGBY:** Thanked staff for their work.

**TOSCANO:** No report.

**ADJOURNMENT:** The meeting was adjourned at the hour of 7:41 p.m.

APPROVED:

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John Cates, Chairperson

ATTEST:

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Sandra Benetti, Planning Technician





City of  
**Los Banos**  
*At the Crossroads of California*

**PLANNING COMMISSION STAFF REPORT**

**TO:** CHAIRMAN CATES AND PLANNING COMMISSIONERS  
**FROM:** RUDY LUQUIN, ASSOCIATE PLANNER *RL*  
**FOR:** SEPTEMBER 11, 2019  
**SUBJECT:** MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY-  
JANA NAIRN

**RECOMMENDATION:**

That the Planning Commission adopt Resolution No. 2019-18 approving the proposed project to be categorically exempt from the California Environmental Quality Act pursuant to Section 15311, Accessory Structures and approving Mobile Food Vendor Permit #2019-07 for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard, Assessor's Parcel Number: 026-280-007.

**PROJECT BACKGROUND/DESCRIPTION:**

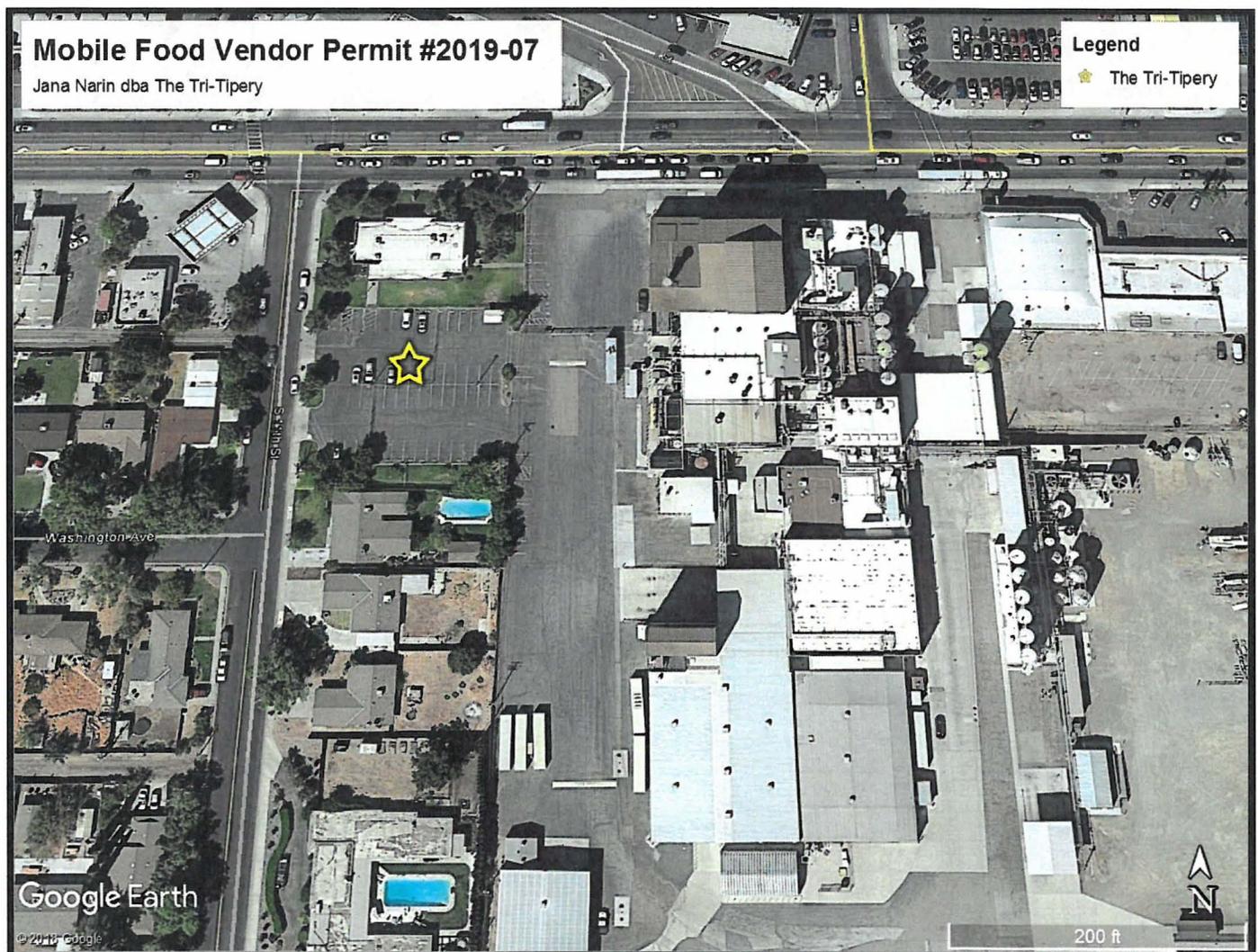
In accordance with the Los Banos Municipal Code Title 9 Chapter 3 Article 36 Mobile Food Vending, the general purpose is to promote the health, safety, comfort, convenience, prosperity and general welfare of the citizens, businesses and visitors of the City of Los Banos by requiring that mobile food vendors provide the community and customers with a minimum level of cleanliness, quality, safety and security. This article also provides mobile food vendors with clear and concise regulations to prevent safety, traffic and health hazards as well as to preserve the peace, safety and welfare of the community.

The City of Los Banos Community & Economic Development Department received a request for a mobile food vendor permit for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard (Century 21 M&M Associates). The proposed mobile food vending unit will operate occasionally, one day per week or one day per month depending on demand, serving lunch from 11:00 a.m. to 2:00 p.m. and dinner from 4:00 p.m. to 8:00 p.m. The proposed mobile food

vending operation will consist of three (3) employees at this time. The mobile vending unit will be on site during proposed business hours and off site when not operating.

**LOCATION AND ACCESS:**

The proposed mobile vending location is at 1155 Pacheco Boulevard; APN: 026-280-007. The mobile food vending unit will be located in a parking stall within the parking lot of the Century 21 M&M Associates. The project site can be accessed from South Eleventh Street. The specific location of the proposed mobile unit is detailed in the yellow star below.



**VENDOR PERMIT ANALYSIS**

***Code Requirements***

According to the Los Banos Municipal Code, the Planning Commission is the decision making authority for any initial application of a permit to operate a mobile vending unit, once the initial permit is approved, subsequent permits are approved by the Community

and Economic Development Director. Furthermore, mobile vendors located on private property are subject to the following conditions Section 9-3.3606(b):

1. Be incidental to a primary use with a valid Business License; a mobile vending unit shall not be the primary use of a parcel. Mobile vending units shall not be permitted as an accessory use to a standalone parking lot.

*The primary use of the property is a real estate office which has a valid Business License. The mobile food vending unit will be an accessory use to the main and primary real estate office use of the property.*

2. Be located in a Commercial or Industrial zoning district. Mobile vendors shall not be located on private property in a residential zoning district.

*The subject property site is located at 1155 Pacheco Boulevard which is within the Highway Commercial Zoning District (H-C), which is private property that is used for commercial uses.*

3. Not be located on a vacant parcel.

*The mobile food vending unit will be located on an improved parcel with an existing parking lot and commercial structure.*

4. Be located on pavement/concrete per City standards.

*The mobile food vending unit will be stationed on a parking lot that is consistent with City Standards and Specifications.*

5. Not utilize, or be located on, parking spaces required for the primary use. At least two onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.

*The project site contains more than sufficient parking as the proposed mobile food vendor location is within the parking lot of the Century 21 M&M Associates business location.*

6. Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.

*The operation and location of the proposed mobile food vending unit will not interfere or obstruct any of the access, driveways, aisles, traffic circulation, or fire lanes and hydrants within the property. The proposed mobile food vending unit will operate in safe manner as determined by the Community and Economic Development Department.*

7. Comply with the requirements of the Merced County Environmental Health Department.

*The applicant presently has a Merced County Department of Environmental Health Permit to operate the proposed mobile food vehicle. The applicant will comply with all the rules, regulations and requirements presented by the Merced County Environmental Health Department.*

8. Not interfere with pedestrian movement or create a hazard for pedestrians.

*The proposed mobile food vending unit will not disrupt pedestrian movement nor will it create a hazard for pedestrians as the proposed site location for the mobile vending unit is on private property within a parking stall and will not obstruct any pedestrian walkways.*

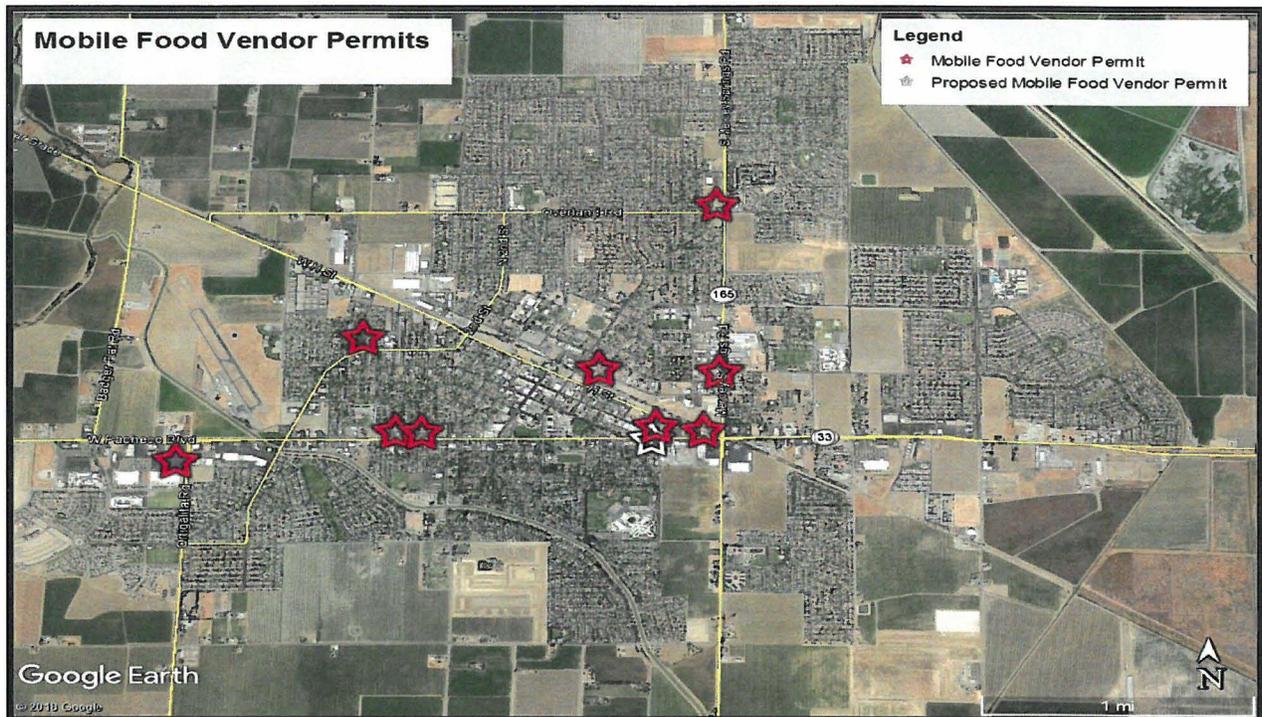
Staff has determined that the proposed vendor permit is consistent with Los Banos Municipal Code Title 9 Chapter 3 Article 36. Conditions of approval have been incorporated into the project to make certain that the applicant conforms to the required level of cleanliness, quality, safety and security required by the Los Banos Municipal Code.

**Existing Vendor Permits**

Currently there are nine (9) active mobile vendor permits in the City. The following is a list of Vendor Permits approved by the Planning Commission for operation on private property:

<b>Business Name</b>	<b>Business Owner</b>	<b>Location</b>	<b>Vendor Type</b>
Junior's Tacos	Antemio & Gabriela Cortes	740 G St	Taco Truck
El Grullense, Jal	Leobardo Oliva	531 Mercey Springs Rd.	Taco Truck
Tacos & Mariscos Las Brasas	Natividad Parra	403 N. Mercey Springs Rd.	Taco Truck
Tacos El Jefe	Christian Mendoza	1155 I St.	Taco Truck
Taco Face	Rosa Orozco	310 W. Pacheco Blvd.	Taco Truck
A-1 Water Quality	Roger Pires	1248 E. Pacheco Blvd.	Water Truck
Tacos La Bonita	Eliseo Jarrillo	140 W. Pacheco Blvd.	Taco Truck
El Gurellense, Jal #6	Jaidel Perez	1301 W. Pacheco Blvd.	Taco Truck
Biggins Texas BBQ	Kenneth Lambert	520 W. I St.	BBQ Truck

The existing mobile vendor locations are marked in red and the proposed mobile unit is marked in white on the following map:



**PUBLIC COMMENT:**

A public hearing notice was published in the Los Banos Enterprise on Friday, August 30, 2019. As of the date of this staff report no comments have been received.

**APPLICABLE ORDINANCES/GUIDELINES:**

Los Banos Municipal Code – LBMC Title 9 Chapter 3 Article 36

**RECOMMENDATIONS:**

That the Planning Commission adopt Resolution No. 2019-18 approving the proposed project to be categorically exempt from the California Environmental Quality Act pursuant to Section 15311, Accessory Structures and approving Mobile Food Vendor Permit #2019-07 for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard, Assessor's Parcel Number: 026-280-007.

**ATTACHMENTS:**

1. Resolution #2019-18  
Exhibit A CEQA Findings  
Exhibit B Project Findings  
Exhibit C Conditions of Approval
2. Truck Photos
3. Site Plan
4. Merced County Environmental Health Permit

5. Public Hearing Notice – August 30, 2019

## RESOLUTION NO. 2019-18

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS APPROVING THE PROJECT TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15311, ACCESSORY STRUCTURES AND APPROVING MOBILE FOOD VENDOR PERMIT #2019-07 FOR THE OPERATION OF A MOBILE FOOD VENDING UNIT TO VEND ON PRIVATE COMMERCIAL PROPERTY LOCATED AT 1155 PACHECO BOULEVARD, ASSESSOR'S PARCEL NUMBER: 026-280-007.**

WHEREAS, the applicant, Jana Nairn, d.b.a: The Tri-Tipery, has filed an application with the City of Los Banos for a Mobile Food Vendor Permit to allow the operation of a mobile food vending unit on private commercial property located at 1155 Pacheco Boulevard; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Mobile Food Vendor Permit #2019-07 for The Tri-Tipery was determined to be Categorically Exempt from the provisions of CEQA per Article 19, Section 15311 as the project meets all the criteria for an Accessory Structures and it can be seen with certainty that the proposed project would not have a significant effect on the environment; and

WHEREAS, a public hearing notice was advertised in the Los Banos Enterprise on Friday, August 30, 2019, in accordance with the Los Banos Municipal Code and California Government Code Section 65091; and

WHEREAS, the Los Banos Planning Commission held a public hearing on September 11, 2019, at which time interested persons had an opportunity to provide testimony; and

WHEREAS, the Los Banos Planning Commission, heard and considered testimony, if any, of all persons desiring to be heard, and reviewed said Vendor Permit request and staff report, and considered the applicant's request in accordance with the Vendor Permit criteria established in the Los Banos Municipal Code Title 9 Chapter 3 Article 36; and

BASED ON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING the Planning Commission of the City of Los Banos hereby makes the findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that based upon the foregoing the Planning Commission of the City of Los Banos does hereby approve Mobile Food Vendor Permit #2019-07 to permit the use of a mobile food vending unit to operate on private commercial property, located at 1155 Pacheco Boulevard, APN: 026-280-007, within the City of Los Banos, subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 11<sup>th</sup> day of September 2019 by Planning Commissioner \_\_\_\_\_ who moved its adoption, which motion was duly seconded by Planning Commissioner \_\_\_\_\_, and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
John Cates, Planning Commission Chairman

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary

## EXHIBIT A

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)**

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. (CEQA) and Title 14, California Code of Regulations 15000 et seq. (the CEQA Guidelines), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds the proposed mobile vendor permit appropriate for the Highway Commercial Zoning District (H-C) as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Guidelines, Mobile Food Vendor Permit #2019-07 was evaluated within the context of those guidelines and found to be categorically exempt from the provisions of CEQA – Article 19, Section 15311.
2. Mobile Food Vendor Permit #2019-07 was adequately noticed and circulated for public review and comment on August 30, 2019 for consideration at a public meeting on September 11, 2019 and no comments were received.
3. No further environmental documentation is required as the Mobile Food Vendor Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.



## EXHIBIT B

### FINDINGS FOR APPROVAL FOR MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)

#### FINDINGS FOR APPROVAL:

The City of Los Banos Planning Commission hereby finds as follows:

1. The applicant has provided all of the information to the Community and Economic Development Department as required by the Mobile Food Vendor Ordinance.
2. The proposed operation is consistent with the criteria and requirements of the Mobile Food Vendor Ordinance as follows:

- a) Be incidental to a primary use with a valid Business License; a mobile vending unit shall not be the primary use of a parcel. Mobile food vending units shall not be permitted as an accessory use to a standalone parking lot.

*The primary use of the property is a real estate office for Century 21 M&M Associates, which has a valid Business License. The mobile food vending unit will be an accessory use to the main and primary use of the property.*

- b) Be located in a Commercial or Industrial zoning district. Mobile vendors shall not be located on private property in a residential zoning district.

*The subject property site is located at 1155 Pacheco Boulevard, which is within the Highway Commercial Zoning District (H-C), which is private property that is used for commercial uses.*

- c) Not be located on a vacant parcel.

*The mobile food vending unit will be located on an improved parcel with an existing parking lot and commercial structure.*

- d) Be located on pavement/concrete per City standards.

*The mobile food vending unit will be stationed on a parking lot that is consistent with City Standards and Specifications.*

- e) Not utilize, or be located on, parking spaces required for the primary use. At least two onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.

*The project site contains more than sufficient parking as the proposed mobile food vendor location is within the parking lot of the Century 21 M&M Associates business location.*

- f) Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.

*The operation and location of the proposed mobile food vending unit will not interfere or obstruct any of the access, driveways, aisles, traffic circulation, or fire lanes and hydrants within the property. The proposed mobile food vending unit will operate in safe manner as determined by the Community and Economic Development Department.*

- g) Comply with the requirements of the Merced County Environmental Health Department.

*The applicant presently has a Merced County Department of Environmental Health Permit to operate the proposed mobile food vehicle. The applicant will comply with all the rules, regulations and requirements presented by the Merced County Environmental Health Department.*

- h) Not interfere with pedestrian movement or create a hazard for pedestrians.

*The proposed mobile food vending unit will not disrupt pedestrian movement nor will it create a hazard for pedestrians as the proposed site location for the mobile vending unit is on private property within a parking stall and will not obstruct any pedestrian walkways.*

## EXHIBIT C

### CONDITIONS OF APPROVAL FOR MOBILE VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)

#### Community and Economic Development:

1. The operation of the Mobile Vending Unit shall at all times comply with the requirements of the Los Banos Municipal Code, the Conditions of Approval for Mobile Food Vendor Permit #2019-07 including but not limited to the application on file with the Community and Economic Development Department. Should there be a conflict, the Municipal Code and the Conditions of Approval shall control.
2. The Mobile Food Vendor Permit is to allow for a mobile food vending unit to operate on private commercial property, in the location depicted in the application, located at 1155 Pacheco Boulevard; the permit shall expire one (1) year from date of issuance.

The applicant shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business including the Merced County Environmental Health Department.

3. The mobile food vendor shall have a valid City of Los Banos Business License and renew such license each year.
4. The mobile food vending unit shall be moved off-site when not in operation.
5. A background check through the Los Banos Police Department must be obtained for the mobile food vendor and each person operating or vending out of the mobile unit prior to issuance of a Business License.
6. The applicant shall comply with the applicable requirements of the Los Banos Municipal Code including but not limited to the following:
  - a. The operation shall not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.
  - b. The mobile food vendor shall display, in plain view and at all times, current permits and licenses.

- c. While vending, drive wheels of the mobile food vending unit shall be chocked in such a manner as to prevent movement.
- d. The permitted hours of operation are from 11:00 a.m. to 8:00 p.m.
- e. The mobile food vending unit shall be entirely self-sufficient in regard to gas, water and telecommunications.
- f. The mobile food vendor shall not discharge items onto the sidewalk, gutter, storm drainage inlets or streets.
- g. The mobile food vending unit shall be maintained in a safe and clean manner at all times.
- h. No tables, chairs, fences, shade structures or other site furniture, (permanent or otherwise) or any free standing signs shall be permitted in conjunction with the mobile food vendor.
- i. Any site improvements required for mobile vendor operations shall require application for the appropriate permits to ensure building and public safety and consistency.
- j. Exterior storage of refuse, equipment or materials associated with the mobile food vendor is prohibited.
- k. The mobile food vendor operating the mobile food vending unit as defined by the Health and Safety Code shall operate out of a commissary pursuant to Health and Safety Code Section 114295.
- l. The mobile food vending unit shall be equipped with refuse containers large enough to contain all refuse generated by the operation of such a unit, and the vendor of the mobile unit shall pick up all refuse generated by such operation on the lot before such unit is moved at the close of business each day. The mobile vendor shall not dispose of any trash or refuse in any such public or private trash receptacle other than a trash receptacle owned, operated or otherwise provided by and under the control of such vendor.
- m. The mobile food vendor shall install signage in a visible location on the mobile vending unit indicating that loitering is not permitted.
- n. The mobile food vendor shall enforce the no loitering rule.
- o. The mobile food vending unit shall be located on an improved surface at all times.

7. The mobile food vending unit shall obtain Fire Department approval and shall be subject to inspection by the Los Banos Fire Department prior to issuance or renewal of a business license involving use of the mobile vending unit if the unit contains any combustibles (i.e. propane, natural gas).
8. The mobile food vending unit shall comply with California Fire Code, California Code of Regulations, and California Mechanical Code. Should any utility hook-ups or connections to on-site utilities be used or required, the mobile food vendor shall be required to apply for appropriate permits or receive approval by the appropriate City department to ensure building and public safety and consistency with applicable building and zoning regulations.
9. The applicant agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
10. The mobile food vending unit shall not be inconsistent with the Conditions of Approval and shall not be operated in a manner that deviates from the approved vendor permit, which shall constitute a violation and may result in the revocation or modification of the permit upon written notice to the owner of the subject unit.
11. The operation of Mobile Food Vendor Permit #2019-07 shall be located at 1155 Pacheco Boulevard south of the real estate office not obstructing parking, pedestrian walkways or vehicular traffic. Relocation of the mobile unit on site shall only occur with prior approval by the Community and Economic Development Director or designee or Planning Commission.
12. At least two (2) onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.





The **TRI-TIPERY**

Food Truck

HOME OF THE  
FAMOUS WAGON WHEEL!



WWW.TRITIPERY.COM

APR California  
75477K2



California -  
75477K2  
DMV.CA.GOV



The TRIPPERY™ Food Truck

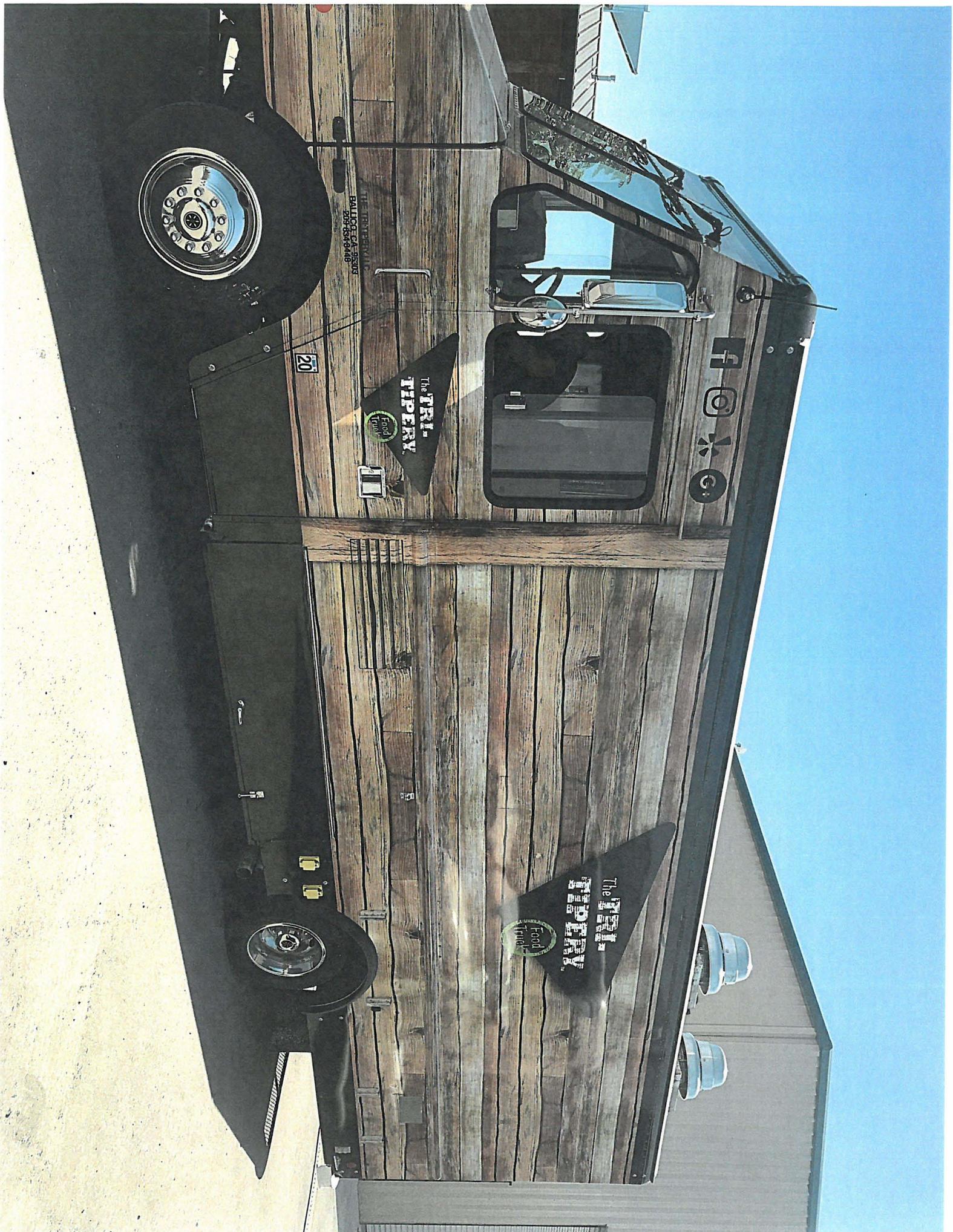
HOME OF THE FAMOUS WAGON WHEEL!

WWW.TRIPPERY.COM



NO PARKING

XTRIBEST

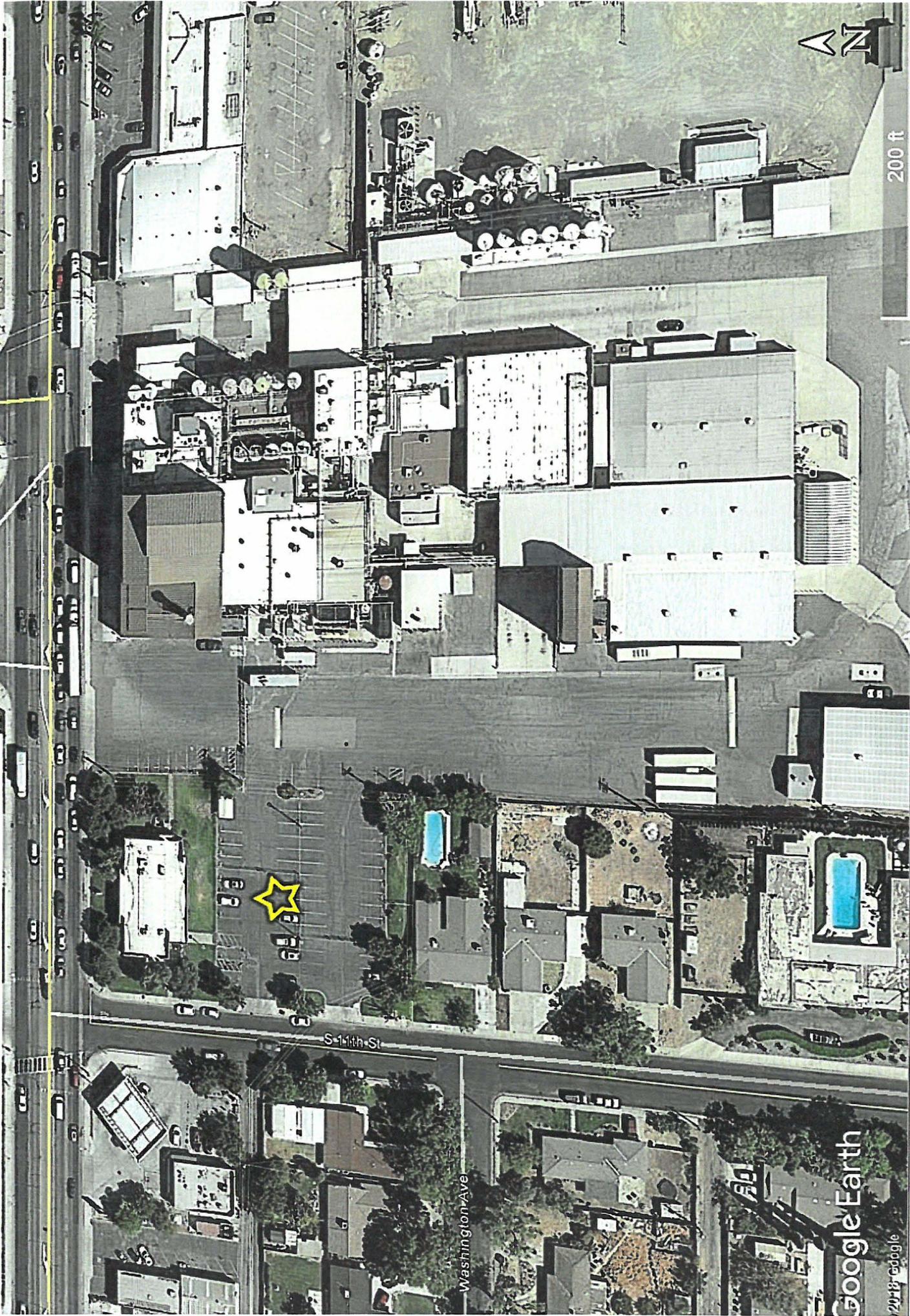


# Mobile Food Vendor Permit #2019-07

Jana Narin dba The Tri-Tipery

## Legend

★ The Tri-Tipery



200 ft

Google Earth

2018-06040e



H90500  
Merced County Public Health  
Division of Environmental Health  
260 E. 15th Street  
Merced, CA 95341-6216

The Tri-Tipery Food Truck  
PO Box 12  
Ballico, CA 95303

Attached to the bottom of this letter is your Health Permit to Operate. *The permit is valid only upon receipt of all required invoiced fees and penalties (if any), **AND** compliance with state, federal and local regulations.*

Facilities operating without a valid permit will be subject to **administrative penalties equal to three times the full annual permit fee** and/or potential late payment penalties. Facilities operating without a valid permit may be subject to closure. After 90 days, any unpaid invoice balances will be sent to Revenue and Reimbursement (collections).

This permit and the permit fees are **ONLY** valid for the business and owner named below and are **not transferable** to any other person, business, or facility.

If you have any questions regarding this matter, please call our office at (209) 381-1100.

Run 11/28/2018 4:00 15PM

FOLD FORM HERE AND DISPLAY PROMINENTLY WITHIN CUSTOMER VIEW ON THE PREMISES

5303.rpt (updated 11/28/2018)



MERCED COUNTY DEPARTMENT OF PUBLIC HEALTH  
DIVISION OF ENVIRONMENTAL HEALTH  
260 E. 15th Street, Merced, CA 95341  
(209) 381-1100 Fax (209) 384-1593  
<http://www.co.merced.ca.us/eh> Equal Opportunity Employer

### Health Permit to Operate

Valid from 1/1/2019 to 12/31/2019

REGULATED FACILITY: The Tri-Tipery Food Truck  
11359 Newport Road  
Ballico, CA 95303

Facility ID: FA0008723  
Account ID: AR0017990  
Issued: 11/28/2018

OWNER NAME: **Jana Nairn**

Program Element Number and Description  
**0143 MOBILE FOOD FAC (MOBILE FOOD PREP UNIT)**

Permit ID #    Units  
**PT0014467**    **PR0018761**

Permit is not valid until all permit fees are paid in full. Permits to operate and Annual Fee Payments are NOT TRANSFERABLE. This permit is valid ONLY for this owner, Jana Nairn. New owners must apply and pay for a new Permit(s) PRIOR to beginning operation or penalties will be assessed.

MOBILE FOOD PREP UNITS MUST COMPLY WITH LOCAL PLANNING REGULATIONS.  
**THIS FORM MUST BE CONSPICUOUSLY DISPLAYED ON THE PREMISES**

Vicki Jones, MPA, REHS  
Interim Director of Environmental Health





City of  
**Los Banos**  
*At the Crossroads of California*

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**COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT**

Date: August 30, 2019

Regarding: Notice of Public Hearing

Proposal: Mobile Food Vendor Permit #2019-07 – Jana Nairn (dba The Tri-Tipery)

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Categorical Exemption from the California Environmental Quality Act (CEQA) and a Mobile Food Vendor Permit #2019-07 to allow the operation of a mobile food vending vehicle on private commercial property for Jana Nairn dba The Tri-Tipery. The subject property is located within the Highway Commercial Zoning District at 1155 Pacheco Boulevard, more specifically identified as Assessor's Parcel Number: 026-280-007.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, September 11, 2019 at 7:00 p.m. in the Council Chambers of Los Banos City Hall, located at 520 "J" Street, Los Banos, California. Questions regarding the above-referenced item may be directed to Rudy Luquin, Associate Planner, at City Hall or at (209) 827-2432.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Additional information may be obtained from the Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

  
Rudy Luquin  
Associate Planner





City of  
**Los Banos**  
*At the Crossroads of California*

**Agenda Staff Report**

**TO:** Chairman Cates and Planning Commissioners

**FROM:** Stacy Souza Elms, Community and Economic Development Director  
William A. Vaughn, City Attorney

**DATE:** September 11, 2019

**TYPE OF REPORT:** Public Hearing

**SUBJECT:** Density Bonus and other Affordable Housing Development Incentives Ordinance.

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**RECOMMENDATION**

Adopt Planning Commission Resolution No. 2019-19:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING AND RESTATING ARTICLE 34 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER AFFORDABLE HOUSING DEVELOPMENT INCENTIVES

**BACKGROUND**

Pursuant to Government Code Section 65915(a)(1), all local governments are required to adopt local ordinances that are consistent with State law. The City of Los Banos last amended its local Density Bonus ordinance in 2010; since that time a series of legislative updates *have* been adopted at the state level concerning affordable housing and in particular density bonus'.

Therefore, the City's current ordinance is in need of updating to ensure that it is in full compliance with state law.

The following provides a brief summary of each piece of adopted legislation followed by the recommended revisions to the City's density bonus ordinance. The full text of the proposed ordinance revisions are provided within Attachment 1. Staff has also included the full text of Government Code Sections 65915 and 65915.7 as Attachments 2 and 3 respectively, and the summary sheet for each adopted bill as Attachment 4.

## **DISCUSSION**

### **Assembly Bill 2222, effective January 1, 2015**

In September, 2014, Assembly Bill (AB) 2222 was signed into law to amend *several* aspects of the state density bonus law. Prior to the bill, affordable units provided to qualify for density bonuses were subject to affordable income restrictions for a period of 30 years; AB 2222 extended the affordability term to 55 years.

Additionally, AB 2222 introduced an affordable-unit replacement requirement in an effort to help address the potential displacement of existing tenants. The bill requires that projects using a density bonus replace rental units that *have* been occupied by *very* low or low-income households within the *five-year* period preceding the development application.

Applicants could elect to either:

- provide replacement units of equivalent or greater number to units that are occupied by lower income households or subject to a rent or price control; or
- ensure that units are affordable to *very* low-, or low-income households.

The replacement provisions contained in AB 2222 were substantially expanded and clarified in the January, 2017 amendments adopted through AB 2556

### **Proposed Ordinance Amendments:**

Section 9-3.3404(d) has been added to reflect the new required term of 55 years. Section 9-3.3403(b) has been added to clarify eligibility requirements for proposed housing developments involving property containing existing affordable housing units.

### **Assembly Bill 744, effective January 1, 2016**

Assembly Bill 744 was adopted in 2015. The bill required that local governments, upon request from an applicant developing a rental housing project that is density bonus eligible, grant further reductions in parking requirements depending on the project's proximity to transit. The provisions of AB 744 expand the parking reduction options available to developers that were provided in the state density bonus law.

Jurisdictions may however require higher parking ratios for housing near transit if the City has completed a parking study within the last seven years that supports the need for more parking.

**Proposed Ordinance Amendments:**

Sections 9-3.3412 of the proposed Ordinance has been revised to reflect the parking allowances outlined in AB 744. Also, the definition of "Major Transit Stop" (as defined in Public Resources Code Section 21064.3) has been added to Section 9-3.3402 of the proposed Ordinance.

**Assembly Bill 1934, effective January 1, 2017**

AB 1934 expanded the state law to provide incentives for commercial developers to contribute to affordable housing through creation of Government Code Section 65915.7.

The bill provided a bonus for commercial developers that enter an agreement with a housing developer to provide affordable units in a joint mixed-use project, or as two separate but related projects. Commercial developers must define how they are contributing to the affordable housing development; three options are recognized by the state law.

- The commercial developer may directly build the units.
- The commercial developer may donate a portion of the development site, or property located elsewhere, to the housing developer to build affordable housing.
- The commercial developer may make a cash payment to the housing developer to offset the construction cost for affordable housing.

To qualify for the density bonus, the proposed affordable units must contain a prescribed number of low- or very-low income units: at least 30% of the total units proposed shall be for low-income households, or at least 15% shall be for very low-income households. If the affordable units are to be constructed off-site (separate) from the non-residential development, the units must be located on a site that is:

- within the local jurisdiction;
- near public amenities, including schools and employment centers; and
- located within one-half mile of a major transit stop.

The provisions of AB 1934 do not prevent an affordable housing developer from utilizing the density bonus, concession or incentives, waivers or reductions that are available through the state law. Furthermore, the amendments did not reduce or waive affordable housing impact fees that may apply to commercial projects in the jurisdiction. The provisions of AB 1934 are subject to a sunset clause of January 1, 2022.

### **Proposed Ordinance Amendments:**

Definitions for "Commercial Development Bonus", was added to reflect the provisions outlining partnered housing in Government Code Section 65915.7. Section 9-3.3415 provides the requirements for a commercial developer to participate in the commercial development bonus mandated by Government Code Section 65915.7.

### **Assembly Bill 2442, effective January 1, 2017**

Assembly Bill 2442 amends Section 65915(b) to include additional categories of specialized housing that would qualify a project for a density bonus. If at least 10% of the proposed units in a project are designated for very-low income households for a period of 55 years, and are targeted to the following specialized housing types, they may qualify for a density bonus:

- transitional foster youth as defined in Education Code Section 66025.9
- disabled veterans as defined in Government Code Section 18541
- homeless persons as defined in 42 U.S.C. Sec. 11301 et seq.

The density bonus for these projects is 20% of the provided specialized housing units.

### **Proposed Ordinance Amendments:**

Definitions for "Transitional Foster Youth", "Disabled Veteran", and "Homeless Persons" were added to Section 9-3.3402. The required reservation requirement was outlined in Section 9-3.3404, and the amount of density bonus granted for qualifying projects has been added to Section 9-3.3403.

### **Assembly Bill 2501, effective January 1, 2017**

AB 2501 streamlines density bonus application processing in recognition of the financial implications for developers caused by permitting delays. Streamlining changes are described in Government Code Section 65915(a)(3); these changes require that local jurisdictions:

- Adopt procedures and timelines for processing density bonus applications.
- Provide a list of all information required to be submitted with the density bonus application for the density bonus application to be deemed complete.
  - Issue completeness determinations on applications within 30 days in compliance with Government Code Section 65943.

AB 2501 includes several additional clarifications and procedural amendments to aid in the application and enforcement of the state law.

- Local governments are prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies that are not described in the state law. Cities can however require "reasonable documentation" to establish eligibility for incentives or concessions, waivers or reductions, or reduced parking ratios.

- The burden of proof for denying a requested concession or incentive is placed more directly on local jurisdictions, with clarifying language on determining whether a concession or incentive results in cost reductions in support of affordable housing development. The bill amends Section 65915(d)(1)(A), the first finding of fact to deny a requested concession or incentive. Local jurisdictions must grant the requested concession or incentive unless it "does not result in identifiable and actual cost reductions," to provide for affordable housing. The revised language clarifies that jurisdiction shall determine whether a concession or incentive is financially sufficient.

### **Proposed Ordinance Amendments:**

Section 9-3.3413 has been updated to include specific application requirements related to a requested density bonus, incentive, waiver, parking reduction, or commercial development bonus. Section 9-3.3410(c) has been revised to reflect the required finding associated with identifiable and actual cost reductions.

### **Assembly Bill 2556, effective January 1, 2017**

As described above, AB 2222 amended the state law in 2014 to preserve existing affordable housing units by prohibiting an applicant from receiving a density bonus, incentive, concession, waiver or reduction, if a development removed units that at any time in the five-year period preceding the application were occupied by lower-income households or subject to a form of rent control. AB 2222 is reflected in the Government Code Section 65915(c), and includes the stipulation that projects may overcome this restriction by replacing affordable units with units of equivalent affordability, size and/or type. AB 2222 failed to clarify how replacement unit requirements should be determined if resident income levels were not verifiable.

AB 2556 (2017) provides clarifying language to satisfy the replacement unit requirements in the State Law, including:

- Projects shall provide at least an equal number of replacement units of equivalent size and affordability. Equivalent size means providing at least the same total number of bedrooms.

- For currently-occupied units that would be removed, if the income level of the household is not known, it shall be presumed that the building is occupied by the same proportion of lower income renter households to all renter households as is the case for the jurisdiction as a whole.

- For buildings vacated or demolished within five (5) years of the development application, if the income level of the last occupants in previously existing units is not known it shall be presumed that very low- and low-income households occupied the units in the same proportion of very low- and low-income renter households to all renter households in the jurisdiction.

**Proposed Ordinance Amendments:**

The definition of "Equivalent Size" has been included in Section 9-3.3402. The proposed application submittal requirements for projects seeking a density bonus, outlined in Section 9-3.3413, includes the requirement to submit a description and tenant income information of all occupied or .previously occupied dwelling units at the proposed project site for the five-year period preceding submittal of the density bonus application.

**Senate Bill 1227, effective January 1, 2019**

SB 1227 allows developers to request a 35% density bonus for development with at least 20% of units reserved for lower income students in a dedicated student housing project.

**Proposed Ordinance Amendments:**

Reservation requirements, consistent with the requirements outlined in Government Code Section 65915, have been included in Section 9-3.3403 for student housing projects. The amount of density bonus for student housing projects meeting the required reservation requirements has been included in Section 9-3.3405.

**Assembly Bill 2753, effective January 1, 2019**

AB 2753 Requires cities to provide an applicant with a determination as to the amount of density bonus and any parking ratios requested by the applicant for which the development is eligible and whether the applicant has provided adequate information to make a determination as to any incentives, concessions, or waivers or reductions to development standards requested by the applicant.

**Proposed Ordinance Amendments:**

The application requirements for density bonus requests outlined in Section 9-3.3413, requires the applicant to provide the relevant information for the City to make a determination on their request on a particular provision afforded under the density bonus provisions.

## **Assembly Bill 2797, effective January 1, 2019**

AB 2979 requires that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted in a manner that is consistent with that law and the California Coastal Act of 1976.

### **Proposed Ordinance Amendments:**

Not applicable to the City.

### **CONCLUSION**

Density bonus is state law, covered under California Government Code Section 65915, that allows developers to increase density at a given project site above the maximum allowable density of a given parcel under its General Plan Land Use designation. In exchange for additional density, a certain number of dwelling units are required to be reserved, for a period of not less than 55 years, for very low, low, moderate-income households, seniors, transitional foster youth, disabled veterans, homeless persons, or low-income students.

The revisions to proposed Ordinance are intended to provide consistency with state law and clarification regarding the implementation of state mandated regulations as specified in Government Code Section 65915. As noted in Government Code Section 65915(a)(1), cities are required to adopt an ordinance that specifies how compliance with state law will be implemented. Failure to adopt an ordinance does not relieve a city from complying with state law. Incorporating the proposed revisions would bring the City's Affordable Housing Density Bonus ordinance into full compliance with state law.

### **ENVIRONMENTAL REVIEW**

The proposed project is an update to Article 34 of Title 9 of the Comprehensive Zoning Ordinance for consistency with existing state law. The proposed project would not, in and of itself, occasion land development or any other material change to the environment. Projects subject to the amended provisions would be subject to a separate CEQA review.

Therefore, the proposed ordinance does not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that the proposed ordinance is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines Section 15061 (b)(3) and is not subject to environmental review.

Attachments:  
Resolution 2019-19  
Proposed ordinance  
Resource materials

## RESOLUTION NO. 2019-19

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING AND RESTATING ARTICLE 34 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER AFFORDABLE HOUSING DEVELOPMENT INCENTIVES**

WHEREAS, the City of Los Banos currently implements the State of California mandated affordable homes density bonus regulations as required by Section 65915 of the California Government Code, including the related incentives and concessions;

WHEREAS, the purpose of the proposed ordinance is to amend Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code to incorporate recent amendments to California Government Code Section 65915, which requires local agencies to provide incentives or concessions to developers in order to promote the production of housing for very low, low and moderate income households and senior citizens.

WHEREAS, September 11, 2019, the Planning Commission conducted a duly noticed public hearing to consider the proposed amendment to Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Planning Commission finds that the proposed ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines (Chapter 3 of Title 14 of the California Code of Regulations beginning at Section 15000), specifically: Section 15060(c)(2), because the proposed ordinance will not result e in the environment; and Section 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance consists of state-mandated updates to land use regulations for projects that, where applicable, receive individualized CEQA review. Any future development that has the potential to cause a significant effect on the environment will be evaluated through a separate environmental review process in accordance with CEQA. As such, it can be seen with certainty that there is no possibility that the proposed ordinance may have a significant adverse effect on the environment.

2. The Planning Commission finds that the proposed ordinance is consistent with the City's General Plan.

3. The Planning Commission recommends that the City Council of the City of Los Banos consider and approve the attached Ordinance of the City Council of the City of Los Banos Amending and Restating Article 34 Chapter 3 of Title 9 of the Los Banos

Municipal Code Regarding Density Bonuses and other Affordable Housing Development Incentives.

The foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 11th day of September 2019, by Planning Commissioner \_\_\_\_\_ who moved its adoption, which motion was duly seconded by Planning Commissioner \_\_\_\_\_ and the Resolution adopted by the following vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
John Cates, Planning Commission Chairman

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary

## **Article 34. Density Bonuses and other Affordable Housing Incentives**

### **Sec. 9-3.3401 Purpose and intent.**

This Article is intended to provide density bonuses and incentives or concessions for the production of housing that is affordable to the types of households and qualifying residents identified in this Article in accordance with Sections 65915 through 65918 of the California Government Code, as amended or superseded. In enacting these provisions, it is the intent of the City of Los Banos to facilitate the development of affordable housing and to implement the requirements of Government Code Section 65915 et. seq. and the goals, objectives, and policies of the Housing Element of the City's General Plan. Where regulations are not specifically addressed in this Article or where there are conflicts between these provisions and the provisions of California Government Code sections 65915 through 65918, the provisions of California Government Code, as they may be amended over time, shall apply.

### **Sec. 9-3.3402 Definitions.**

For the purpose of this Article, the following meanings and definitions shall apply:

(a) "Affordable rent" has the definition and meaning set forth in California Health and Safety Code section 50053.

(b) "Affordable housing cost" has the definition and meaning set forth in California Health and Safety Code Section 50052.5.

(c) "Child care facility" means a 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 as defined by California Government Code Section 65915(h).

(d) "Commercial development bonus" means a modification of development standards mutually agreed upon by the City and a commercial developer that is provided to a commercial development eligible for such a bonus pursuant to Section 9-3.3414.

(e) "Concession" or "Incentive" has the definition and meaning set forth in California Government Code Section 65915(k) and means any of the following:

(1) A reduction in 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results 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).

(2) 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.

(3) Other regulatory incentives or concessions proposed by the developer or the City, 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).

This definition does not limit or require the provision of direct financial incentives for a housing development, including the provision of publicly owned land, by the City or the waiver of fees or dedication requirements.

(f) "Common interest development" has the definition and meaning set forth in California Civil Code Section 1351.

(g) "Density bonus," means a density increase over the otherwise maximum allowable gross residential density under the applicable zoning code provisions and the land use element of the general plan as of the date of application by the applicant to the City.

(h) "Density bonus housing agreement" means a legally binding agreement between a developer and the City to ensure that the requirements of this Article are satisfied. The agreement, among other things, shall establish: the number of target units, their size, location, terms and conditions of affordability, and production schedule.

(i) "Density bonus units" means those residential units granted pursuant to the provisions of this Article, which exceed the otherwise maximum residential density of the underlying land use designation and zoning district for the development site.

(j) "Development standard" means the site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, or other city condition, law, policy, resolution or regulation including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio as defined by California Government Code Section 65915(o).

(k) "Disabled veteran" has the definition and meaning set forth in California Government Code Section 18541.

(l) "Equivalent Size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced as defined by California Government Code Section 65915(c)(3)(D).

(m) "Homeless person" has the definition and meaning set forth in 42 U.S.C. Section 11301 et.seq.

(n) "Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

(o) "Housing development" means any construction projects consisting of five (5) or more residential units, including single-family, multi-family, and mobile homes for sale or rent, pursuant to this Article.

(p) "Lower income households" has the definition and meaning set and meaning forth in Section 50079.5 of the California Health and Safety Code.

(q) "Major transit stop" has the definition set forth in California Public Resources Code Section 21155.

(r) "Maximum residential density" means the maximum number of residential units permitted by the City's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Article. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

(s) "Moderate income households" has the definition and meaning set forth in Section 50093 of the California Health and Safety Code.

(t) "Non-restricted unit" means all units within a housing development excluding the target units.

(u) "Qualifying resident" means senior citizens or other persons eligible to reside in senior citizen housing.

(v) "Senior citizen housing development" has the definition and meaning set forth in California Civil Code Section 51.3.

(w) "Specific Adverse Impact", as defined in the California Government Code Section 65589.5(d)(2), means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Inconsistency with zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact on public health or safety.

(x) "Target unit" means a dwelling unit within a housing development which will be reserved for sale or rent, and is made available at an affordable rent or affordable ownership cost, to very low, lower, or moderate income households, or is a unit in a senior citizen housing development, or is intended to serve transitional foster youth, disabled veterans, or homeless persons, and which qualifies the housing development for a density bonus and incentives pursuant to Section 9-3.3403 or qualifies a commercial development for a commercial development bonus pursuant to Section 9-3.3413.

(y) "Transitional foster youth" has the definition and meaning set forth in California Education Code Section 66025.9.

(z) "Very low income households" has the definition and meaning set forth in Section 50105 of the California Health and Safety Code.

**Sec. 9-3.3403 Eligibility for density bonus, incentives, or concessions.**

(a) The City shall grant a density bonus, in the amount specified in Section 9-3405, to an applicant who proposes a housing development consisting of five (5) or more residential units and meeting at least one (1) of the following criteria:

(1) At least ten percent (10%) of the total units of the housing development as target units affordable to lower income households, as defined in California Health and Safety Code Section 50079.5; or

(2) At least five percent (5%) of the total units of the housing development as target units affordable to very low income households, as defined in California Health and Safety Code Section 50105; or

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

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

(5) At least ten percent (10%) of the total number of proposed units of housing for transitional foster youth, as defined in Section 66025.9 of the California Education Code, disabled veterans, as defined in Section 18541 of the California Government

Code, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act; or

(6) At least twenty percent (20%) of the total number of proposed units for lower income students in a student housing development that meets the requirements, as defined by California Government Code Section 65915.

(b) An applicant is not eligible for a density bonus, or any other incentives or concessions under this Article, for a proposed housing development involving a property containing existing affordable housing, unless:

(1) The proposed housing development replacement units of equivalent size for the existing affordable housing units; and

(2) Either:

(A) The proposed housing development, inclusive of the replacement units at the percentages set forth in this Section; or

(B) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

**Section 9-3.3404 Requirements; Continued Affordability.**

In addition to any other applicable requirements set forth in this Article the following requirements shall apply to all developments receiving a density bonus pursuant to this Article.

(a) A target unit shall be restricted and affordable to the designated income group qualifying the development for a density bonus pursuant to Section 9-3.3403.

(b) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. For the purposes of this Section, the project's income restricted units would be considered proportional to square footage if they are at least eighty percent (80%) of the average square footage of all market rate units in the development with the same bedroom count. Further, the range of affordable units must be reasonably dispersed throughout the development.

(c) Target units shall be constructed concurrently with market-rate units or pursuant to a schedule included in the density bonus housing agreement. No temporary or permanent certificate of occupancy for any new market-rate unit in a housing development or for commercial space in a commercial development shall be issued until permanent certificates of occupancy have been issued for the required target units unless explicitly permitted by the density bonus housing agreement or partnered housing agreement. If a development project is to be phased, the target units shall be phased in the same proportion as the market rate units, or as set forth in a

schedule included in the density bonus housing agreement or partnered housing agreement.

(d) The time period of availability to the intended population shall be for at least fifty five (55) years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(e) The maximum allowable rents shall be determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the California Government Code.

(f) Owner occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code.

(g) For sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.

(h) The owner of the affordable units for which a density bonus was granted must provide to the City a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

**Section 9-3.3405 Calculation of density bonus.**

(a) A housing development that complies with the eligibility requirements in Section 9-3.3403 shall be entitled to a density bonus as follows, unless a lesser percentage is proposed by the applicant:

(1) Bonus for units for lower income households. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(1) (ten percent (10%) of units for lower income households) shall be entitled to a density bonus calculated as follows:

**BONUS FOR LOWER INCOME  
HOUSEHOLDS**

<b>Percentage Lower Income Units Proposed</b>	<b>Percentage Density Bonus</b>
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**BONUS FOR LOWER INCOME  
HOUSEHOLDS**

<b>Percentage Lower Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) Bonus for units for very low income households. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(2) (five percent (5%) of units for very low-income households) shall be entitled to a density bonus calculated as follows:

**BONUS FOR VERY LOW INCOME  
HOUSEHOLDS**

<b>Percentage Very Low Income Units Proposed</b>	<b>Percentage Density Bonus</b>
5	20
6	22.5

**BONUS FOR VERY LOW INCOME  
HOUSEHOLDS**

<b>Percentage Very Low Income Units Proposed</b>	<b>Percentage Density Bonus</b>
7	25
8	27.5
9	30
10	32.5
11	35

(3) Bonus for senior citizen development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(3) (senior citizen development or mobile home park) shall be entitled to a density bonus of twenty percent (20%).

(4) Bonus for moderate-income units in common interest development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(4) (ten percent (10%) of units in a common interest development for persons and families of moderate income) shall be entitled to a density bonus calculated as follows:

**BONUS FOR MODERATE INCOME  
HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	5
11	6
12	7
13	8

**BONUS FOR MODERATE INCOME  
HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28

**BONUS FOR MODERATE INCOME HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) Bonus for transitional foster youth, disabled veterans, or homeless persons development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(5) (transitional foster youth, disabled veterans, or homeless persons) shall be entitled to a density bonus of twenty percent (20%).

(6) Bonus for lower income students in a student housing development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(6) (lower income students in student housing) shall be entitled to a density bonus of thirty-five percent (35%).

(b) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.

(c) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

(d) An applicant may elect to accept a lesser percentage of density bonus.

(e) The calculations herein are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

(f) Each housing development is entitled to only one density bonus mandated by this Section. If a housing development qualifies for a density bonus under more than one income category or additionally as senior housing or as housing intended to serve

transitional foster youth, disabled veterans, or homeless persons, the applicant shall select the category under which the density bonus is granted. Density bonuses from more than one category may not be combined.

**Sec. 9-3.3406 Additional density bonus for land donation.**

(a) When an applicant for a tentative subdivision map, parcel map, or other residential zoning entitlement development donates land to the City for the purpose of constructing affordable housing, the applicant shall be entitled to a fifteen (15%) percent increase above the maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development as follows:

**BONUS FOR LAND DONATION**

<b>Percentage Very Low-Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28

**BONUS FOR LAND DONATION**

<b>Percentage Very Low-Income Units Proposed</b>	<b>Percentage Density Bonus</b>
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(b) The increase in density set forth in this Section for land donation shall be in addition to any increase in density mandated by Section 9-3.3403 up to a maximum combined mandated density increase of thirty-five (35%) percent, if an applicant seeks both density increases.

(c) Nothing in this Section shall be construed to enlarge or diminish the authority of the City to require a developer to donate land as a condition of development.

(d) An applicant shall be eligible for the increased density bonus described in this Section if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent (10%) of the number of residential units of the proposed development.

(3) The transferred land is at least one (1) acre in size or of sufficient size to permit development of at least forty (40) units and required amenities, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and

infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.

(4) No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, except that the City may subject the proposed development to subsequent design review to the extent authorized by California Government Code Section 65583.2(i) if the design is not reviewed by the City prior to the time of transfer.

(5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 9-3.3404, which shall be recorded on the property at the time of dedication.

(6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

(7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

**Sec. 9-3.3407 Additional density bonus and incentives for developments with childcare facilities.**

(a) When an applicant proposes to construct a housing development that conforms to the density bonus requirements of Section 9-3403, and includes a child care facility other than a large or small family day care home that will be located on the premises of, as part of, or adjacent to the project, the development shall be eligible for the following additional bonus and incentives.

(b) City shall grant to eligible housing developments either of the following:

(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 child care facility;  
or

(2) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(c) The City shall require, as a condition of approving the housing development that the following occur:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.

(2) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-income households, lower income households, or families of moderate income pursuant to the density bonus requirements of Section 9-3.3403.

(d) Notwithstanding the above requirements, the City shall not be required to provide a density bonus or concession for a child care facility in compliance with this Section if it finds, based upon substantial evidence, that the community has adequate child care facilities.

#### **Sec. 9-3408 Condominium conversions.**

(a) The City shall grant either a density bonus or other incentives of equivalent financial value if the applicant for a condominium conversion agrees to provide thirty-three percent (33%) of the total units of the proposed condominium project as target units affordable to lower or moderate income households, or to provide fifteen percent (15%) of the total units in the condominium conversion project as target units affordable to lower income households, and to provide any replacement affordable units required by Section 9-3.3403. All such target units shall remain affordable for the period specified in Section 9-3.3404.

(b) For purposes of this Section, a “density bonus” means an increase in units of twenty-five percent (25%) over the number of apartments to be provided within the existing structure or structures proposed for conversion. “Other incentives of equivalent financial value” shall not be construed to require the City to provide a cash transfer payment or other monetary compensation of any type but may include, at the City’s discretion, modification of requirements that the City might otherwise apply as conditions of approval.

(c) No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this Article or California Government Code Section 65915.

(d) Nothing in this section shall be construed to require the City to approve a condominium conversion.

#### **Sec. 9-3.3409. City discretion**

(a) Nothing in this Article shall be construed to prohibit the City from granting a density bonus greater than what is described in this Article for a development that

meets the requirements of this Article, or from granting a proportionately lower density bonus than what is required by this Article for developments that do not meet the requirements of this Article.

(b) Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one housing development to be produced and operated at an alternative development site. Where the developer and the City form such an agreement, the resulting linked developments shall be considered a single housing development for purposes of this Article. Under these circumstances, the developer shall be subject to the same requirements of this Article for the target units to be provided on the alternative site.

**Sec. 9-3.3410 Incentives and concessions.**

(a) An applicant for a density bonus in compliance with this Article may submit to the City a proposal for the specific incentives or concessions listed in subsection (c) of this Section that the applicant requests in compliance with this Section, and may request a meeting with the Community and Economic Director or his or her designee. The applicant may file a request either before filing an application for City approval of a proposed project or concurrently with an application for project approval.

(b) The applicant shall receive the following number of incentives or concessions:

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

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

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

(c) The City shall grant an incentive or concession request that complies with this Section unless the City makes either of the following findings in writing, based upon substantial evidence:

(1) The concession or incentive does not result in identifiable and actual cost reductions, consistent with Government Code 65915(k), 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 65915(c) and this Article.

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

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

(d) This Section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the City, or the waiver of fees or dedication requirements.

(e) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.

**Sec. 9-3.3411 Waiver or reductions of development standards.**

(a) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of 9-3.3403 at the densities or with the concessions or incentives permitted under this Article, and may request a meeting with the City.

(b) Nothing in this Section shall be interpreted to require the City to waive or reduce development standards if the waiver or reduction 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.

(c) Nothing in this Section shall be interpreted to require the City to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(d) A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this Article.

**Sec.9-3.3412 Parking adjustment/modification in density bonus projects.**

(a) Upon the request of the applicant, the City will not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of Section 9-3.3403 that exceeds the following ratios:

- (1) Zero to one bedrooms: one onsite parking space.
- (2) Two to three bedrooms: two onsite parking spaces.
- (3) Four and more bedrooms: two and one-half parking spaces.

(b) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .5 onsite parking spaces per bedroom, for a development meeting the criteria of Section 9-3.3403, that is located within .5 miles of a major transit stop, and has unobstructed access to the major transit stop.

(c) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .5 onsite parking spaces per unit for a development that consists solely of rental units (exclusive of a manager's unit) with an affordable housing cost to lower income households, and is either:

- (1) Located within .5 miles of a major transit stop, and has unobstructed access to the major transit stop; or
- (2) A for rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the California Civil Code, and has either paratransit service, or unobstructed access to a fixed bus route service that is within .5 miles and operates at least eight times per day.

(d) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .3 onsite parking spaces per unit, for a development that consists solely of rental units (exclusive of a manager's unit) with an affordable housing cost to lower income households, and is a special needs housing development, and has either paratransit service, or unobstructed access to a fixed bus route service that is within .5 miles and operates at least eight (8) times per day.

(e) If the total number of parking spaces required for a development is other than a whole number, the number will be rounded up to the next whole number. For purposes of this Section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

(f) This section applies to a development that meets the requirements of Section 9-3.3403, but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this Section, subject to Section 9-3.3410.

(g) Notwithstanding sub sections (b) (c) and (d) , if the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven (7) years, then the City may impose a higher vehicular parking ratio, not to exceed the ratio described in subsection (a), based upon substantial evidence found in the parking study that includes an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low and very low income individuals, including seniors and special needs individuals. The City will pay the costs of any new study. The City may make findings, based on a parking study completed in conformity with this Section, supporting the need for the higher parking ratio.

**Sec. 9-3.3413 Application and review.**

(a) An application for a density bonus, incentive, concession, waiver, modification, modified parking standard, or commercial development bonus pursuant to this Article shall be submitted with the first application for approval of a housing development or commercial development and processed concurrently with all other applications required for the housing development or commercial development. An applicant shall be informed whether the application is complete consistent with Government Code Section 65943.

(b) The application shall be submitted on a form prescribed by the City including all applicable fees for processing the application, and shall include at least the following information:

(1) Site plan drawn to scale showing total number of units, number and location of target units, and number and location of proposed density bonus units.

(2) Summary table showing the maximum number of units permitted by the zoning and general plan excluding any density bonus units, proposed target units by income level, proposed bonus percentage, number of bonus units proposed, and total number of dwelling units proposed on the site.

(3) Tenure (rental versus for-sale) of target units and proposals for ensuring affordability.

(4) A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If any dwelling units on the site are currently rented, the income and household size, if known, of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size, if known, of residents occupying dwelling units when the site contained the maximum number of dwelling units.

(5) Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.

(6) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards.

(7) For all incentives and concessions except mixed-use development, to establish eligibility for the requested incentives and concessions, the application shall include evidence that the requested incentives and concessions result in identifiable and actual cost reductions, including the actual cost reduction achieved through the incentive, and evidence that the cost reduction allows the applicant to provide affordable rents or affordable ownership costs.

(8) If a mixed-use building or project is proposed as an incentive, the applicant shall provide evidence that nonresidential land uses will reduce the cost of the residential project, and that the nonresidential land uses are compatible with the residential project and the existing or planned surrounding development.

(9) For waivers or modifications of development standards, the application shall provide evidence that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus and incentives requested.

(10) If a parking reduction is requested, a table showing parking required by the zoning ordinance and proposed parking. If a parking reduction provided by Section 9-3.3412(b) (c) or (d) is requested, evidence that the project is eligible for the requested parking reduction.

(11) If a density bonus or concession 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 findings included in Section 9-3.3406(d) can be made.

(12) If a commercial development bonus is requested for a commercial development, the application shall include the proposed partnered housing agreement, the proposed commercial development bonus, and evidence that each of the standards included in Section 9-3.3413(a) through (d) has been met.

(13) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in Section 9-3.3407(c) can be made.

(14) If a density bonus or incentive is requested for a condominium conversion, the application shall provide evidence that all of the requirements found in Section 9-3.3408 can be met.

(c) In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

(d) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

(e) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.

(f) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action, including the otherwise required conditional use permit necessary to exceed the base density of a given General Plan Land Use designation category or zoning district.

**Sec. 9-3.3414 Density bonus housing agreement required.**

(a) Applicants requesting a density bonus shall enter into a density bonus housing agreement with the City in a form approved by the City Attorney.

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

**Section 9-3.3415 Commercial development density bonus.**

(a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the City will grant the commercial developer a development bonus as described in this Section.

(b) The commercial developer must enter into an agreement for partnered housing between a commercial developer and a housing developer that is approved by the City, and identifies how the commercial developer will contribute affordable housing within the City. The commercial developer must partner with a housing developer partner that provides no less than either thirty percent (30%) of the total units for low-income households or fifteen percent (15%) of the total units for very low income households.

(c) The commercial developer may contribute affordable housing by directly building the affordable housing units, donating property to the affordable housing developer as a site for affordable housing, making a cash payment to the affordable housing developer for use towards the cost of constructing the affordable housing project.

(d) Housing must be constructed on the site of the commercial development or on a site that meets all of the following:

(1) Within the boundaries of the City;

(2) Within close proximity to public amenities, including schools and employment centers; and

(3) Within one-half mile of a major transit stop.

(e) The development bonus granted to the commercial developer means incentives, mutually agreed upon by the developer and the City, including any of the following:

(1) Up to a twenty percent (20%) increase in maximum allowable intensity in the General Plan.

(2) Up to a twenty percent (20%) increase in maximum allowable floor area ratio.

(3) Up to a twenty percent (20%) increase in maximum height requirements.

(4) Up to a twenty percent (20%) reduction in minimum parking requirements.

(5) Use of a limited-use/limited-application elevator for upper floor accessibility.

(6) An exception to a zoning ordinance or other land use regulation.

(f) If construction of the affordable units do not commence within the timelines specified by the agreement for partnered housing, then the City may withhold certificates of occupancy for the commercial development until the construction of the affordable housing units are complete.



# Guide to the California Density Bonus Law

BY JON GOETZ AND TOM SAKAI

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## ABOUT THE AUTHORS



### JON GOETZ

E-mail: [jgoetz@meyersnave.com](mailto:jgoetz@meyersnave.com)  
Direct: 800.464.3559

Jon Goetz is a Principal at Meyers Nave. He has over 30 years of experience in real estate, land use, environmental, redevelopment, housing and municipal law. Jon represents private and public entities in complex real estate development transactions, land use planning, public-private development, infrastructure financing and affordable housing. He has advised on acquiring, financing, leasing and disposing of all forms of improved and unimproved property.



### TOM SAKAI

E-mail: [tsakai@springbrookadvisors.com](mailto:tsakai@springbrookadvisors.com)  
Direct: 949.833.2599

Tom Sakai is the Principal of Springbrook Realty Advisors, Inc., a real estate consulting practice located in Newport Beach. His practice specializes in consulting to land developers and homebuilders, focusing on pro formas and feasibilities for master-planned communities, school negotiations, assessment district and Mello-Roos financing, affordable housing issues, and other services to the real estate industry.



# Introduction and Overview

Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 35% increase in project densities, depending on the amount of affordable housing provided. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, and incentives and concessions such as reduced setback and minimum square footage requirements. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. A developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. As with any state mandate, some local governments will resist complying with the state requirement. But many local governments favor the density bonus as a helpful tool to cut through their own land use requirements and local political issues.
- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.
- Special development bonuses are available for developers of commercial projects who partner with affordable housing developers to provide onsite or offsite affordable housing. Special bonuses are also available for condominium conversion projects and projects that include child care facilities.
- The Legislature has recently added density bonuses for housing developments for foster youth, disabled veterans, homeless persons and college students.

## How the Density Bonus Works

### PROJECTS ENTITLED TO A DENSITY BONUS

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobilehome park age-restricted to senior citizens (no affordable units required).

### DENSITY BONUS AMOUNT

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level, as shown in the chart on the following page.



## DENSITY BONUS CHART\*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS	LAND DONATION DENSITY BONUS	SENIOR***	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	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%	27.5%	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%	20%	35%
21%	35%	35%	16%	26%	20%	20%	35%
22%	35%	35%	17%	27%	20%	20%	35%
23%	35%	35%	18%	28%	20%	20%	35%
24%	35%	35%	19%	29%	20%	20%	35%
25%	35%	35%	20%	30%	20%	20%	35%
26%	35%	35%	21%	31%	20%	20%	35%
27%	35%	35%	22%	32%	20%	20%	35%
28%	35%	35%	23%	33%	20%	20%	35%
29%	35%	35%	24%	34%	20%	20%	35%
30%	35%	35%	25%	35%	20%	20%	35%
31%	35%	35%	26%	35%	20%	20%	35%
32%	35%	35%	27%	35%	20%	20%	35%
33%	35%	35%	28%	35%	20%	20%	35%
34%	35%	35%	29%	35%	20%	20%	35%
35%	35%	35%	30%	35%	20%	20%	35%
36%	35%	35%	31%	35%	20%	20%	35%
37%	35%	35%	32%	35%	20%	20%	35%
38%	35%	35%	33%	35%	20%	20%	35%
39%	35%	35%	34%	35%	20%	20%	35%
40%	35%	35%	35%	35%	20%	20%	35%

\*All density bonus calculations resulting in fractions are rounded up to the next whole number.

\*\*Affordable unit percentage is calculated excluding units added by a density bonus.

\*\*\*No affordable units are required for senior units.

## REQUIRED INCENTIVES AND CONCESSIONS

In addition to the density bonus, the city or county is also required to provide one or more “incentives” or “concessions” to each project which qualifies for a density bonus (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing, do not appear to be entitled to incentives or concessions). A concession or incentive is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed use zoning; or
- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project:

NO. OF INCENTIVES/ CONCESSIONS	VERY LOW INCOME PERCENTAGE	LOWER INCOME PERCENTAGE	MODERATE INCOME PERCENTAGE
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%

The city or county is required to grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. The Density Bonus Law restricts the types of information and reports that a developer may be required to provide to the local jurisdiction in order to obtain the requested incentive or concession. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers and reductions in dedication requirements may be, but are not required to be, provided by the city or county. The developer may be entitled to the incentives and concessions even without a request for a density bonus.

## OTHER FORMS OF ASSISTANCE

A development qualifying for a density bonus also receives two additional forms of assistance which have important benefits for a housing project:

- **Waiver or Reduction of Development Standards.** If any other city or county development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. The city or county is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. The waiver or reduction of a development standard does not count as an incentive or concession, and there is no limit on the number of development standard waivers that may be requested or granted. Development standards which have been waived or reduced utilizing this section include setback, lot coverage and open space requirements, and should apply to building height limits as well. This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus.

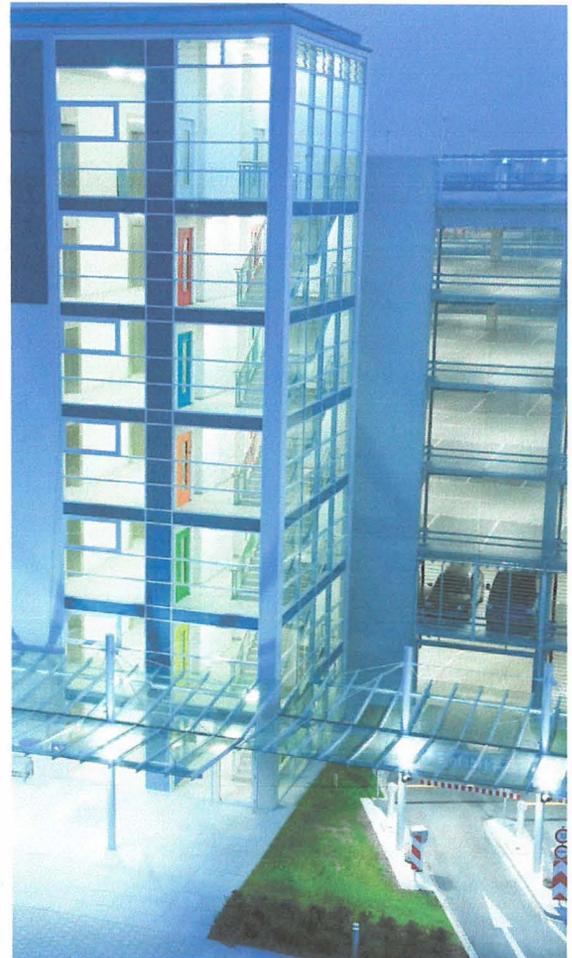
- **Maximum Parking Requirements.** Upon the developer's request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of handicapped and guest parking):

Studio	1 space
1 Bedroom	1 space
2 Bedroom	2 spaces
3 Bedroom	2 spaces
4 Bedroom	2.5 spaces

- **Special Parking Requirements.** Lower parking ratios apply to specified projects (although local jurisdictions can require higher parking ratios if supported by a specified parking study):

Rental/for sale projects with at least 11% very low income or 20% lower income units, within 1/2 mile of accessible major transit stop	0.5 spaces per bedroom
Rental projects 100% affordable to lower income, within 1/2 mile of accessible major transit stop	0.5 spaces per unit
Rental senior projects 100% affordable to lower income, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0.5 spaces per unit
Rental special needs projects 100% affordable to lower income households, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0.3 spaces per unit

Onsite spaces may be provided through tandem or uncovered parking, but not onstreet parking. Requesting these parking standards does not count as an incentive or concession, but the developer may request further parking standard reductions as an incentive or concession. This is one of the most important benefits of the density bonus statute. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units. In higher density developments requiring the use of structured parking, the construction cost of structured parking is very expensive, costing upwards of \$20,000 per parking space. While this provision of the density bonus statute can be used to reduce excessive parking requirements, care must be taken not to impact the project's marketability by reducing parking to minimum requirements which lead to parking shortages.



**AFFORDABLE HOUSING RESTRICTIONS**

- **Rental Units.** Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55 year term for very low or lower income units (formerly only a 30 year term was required). Rents must be restricted as follows:
  - For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.

- For lower income units, rents may not exceed 30% x 60% of the area median income for a household size suitable for the unit.
- Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
- Rents must include a reasonable utility allowance.
- Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.

In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units.

- **For Sale Units.** Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.
  - For very low income units, housing costs may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
  - For lower income units, housing costs may not exceed 30% x 70% of the area median income for a household size suitable for the unit.
  - For moderate income units, housing costs may not exceed 35% x 110% of the area median income for a household size suitable for the unit.
  - Buyers must enter into an equity sharing agreement with the city or county, unless the equity sharing requirements conflict with the requirements of another public funding source or law. The equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city or county a portion of any appreciation received on resale.
  - The city/county percentage of appreciation is the purchase price discount received by the original buyer, plus any down payment assistance provided by the city/county. (For example, if the original sales price is \$200,000, and the original fair market value is \$250,000, and there is no city/county down payment assistance, the city/county subsidy is \$50,000, and the city/county's share of appreciation is 20%).
  - The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of the appreciation.
  - The income and affordability requirements are not binding on resale purchasers (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years).



## **LOCAL GOVERNMENT PROCESSING OF DENSITY BONUS APPLICATIONS**

Under new legislation effective in 2019, local governments are now required to notify developers what information must be submitted for a complete density bonus application. Once a development application is determined to be complete, the local government must notify the developer the level of density bonus and parking ratio the development is eligible to receive. If the developer requests incentives, concessions, waivers or reductions of development standards, the local jurisdiction is required to notify the developer if it has submitted sufficient information necessary for the local government to make a determination on those issues.

## **HOW THE DENSITY BONUS WORKS FOR SENIOR PROJECTS**

As shown in the Density Bonus Chart on page 4, a senior citizen housing development of at least 35 units meeting the requirements of Section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus. This is a very desirable option for senior housing developments. In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus.

## **HOW THE DENSITY BONUS WORKS FOR STUDENT HOUSING PROJECTS**

New legislation taking effect in 2019 requires cities and counties to grant a 35% density bonus for housing developments that will include at least 20% of the units for low income college students. The housing must be used exclusively for full-time students at accredited colleges, and must be subject to an operating agreement or master lease with one or more colleges. Unlike the maximum income requirements for other forms of affordable housing, resident income levels are determined through the student's eligibility for the state's Cal Grant financial aid program. Affordable rent levels are also specially tailored for a student population, with maximum rents established per bed for individual residents, rather than for the entire apartment unit. Homeless students receive priority for affordable units.

## **HOW THE DENSITY BONUS WORKS FOR COMMERCIAL PROJECTS**

The Density Bonus Law requires that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. The commercial developer may participate through the donation of land or funds for the affordable housing, or direct construction of the housing units. The partnership between the commercial developer and the affordable developer can occur through a newly formed legal entity such as a corporation, LLC or partnership, or can take the shape of a contractual agreement between the parties. To be eligible for the development bonus, at least 30% of the housing units must be restricted to lower income residents or 15% of the housing units must be restricted to very low income residents. Unlike the primary Density Bonus Law, there is no fixed amount of increased density awarded to the developer. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, use of a limited use elevator, or an exception to a zoning ordinance or land use requirement. Commercial developers who need extra leverage to obtain more favorable development standards for their project may want to consider providing affordable housing in order to take advantage of the benefits of the development bonus.

## **HOW THE DENSITY BONUS WORKS FOR CONDOMINIUM CONVERSION PROJECTS**

The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% for the total units to low or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful.



# City of Los Banos

At the Crossroads of California

[www.losbanos.org](http://www.losbanos.org)

## AGENDA

### PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS  
520 J Street  
Los Banos, California

**WEDNESDAY, SEPTEMBER 11, 2019**

*If you require special assistance to attend or participate in this meeting, please call the Planning Secretary @ (209) 827-7000 ext. 2431 at least 48 hours prior to the meeting.*

*The City of Los Banos complies with the Americans with Disabilities Act (ADA) of 1990.*

\* \* \* \* \*

*Si requiere asistencia especial para atender o participar en esta junta por favor llame a la oficina de la Secretaria del Departamento de Planificación al (209) 827-7000 ext. 2431 a lo menos de 48 horas previas de la junta.*

*La Ciudad de Los Banos cumple con la Acta de Americanos con Desehabilidad (ADA) de 1990.*

*Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection at the meeting and in the Community & Economic Development Department's office located at City Hall, 520 J Street, Los Banos, California during normal business hours.*

*In addition, such writings and documents may be posted on the City's website at [www.losbanos.org](http://www.losbanos.org).*

\* \* \* \* \*

*Cualquier escritura o los documentos proporcionaron a una mayoría del Comisión de Planificación con respecto a cualquier artículo en este orden del día será hecho disponible para la inspección pública en la reunión y en la oficina del Departamento de Comunidad y Desarrollo Economico del City Hall, 520 J Street, Los Banos, California durante horas de oficina normales.*

*Además, tales escrituras y los documentos pueden ser anunciados en el website de la Ciudad en [www.losbanos.org](http://www.losbanos.org).*

1. CALL TO ORDER **7:00 PM**
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL: (Planning Commission Members)  
Cates \_\_, Dees \_\_, Giuliani \_\_, Higby \_\_, Toscano \_\_

4. APPROVAL OF AGENDA

*Recommendation: Approve the agenda as submitted.*

5. CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF AUGUST 28, 2019

*Recommendation: Approve the minutes as submitted.*

6. PUBLIC FORUM: Members of the public may address the Commission on any item of public interest that is within the jurisdiction of the Commission, including agenda and non-agenda items. No action will be taken on non-agenda items. Speakers are limited to a five (5) minute presentation.

7. PUBLIC HEARINGS: If You Challenge the Proposed Action as Described herein in Court, You May Be Limited to Raising Only Those Issues You or Someone Else Raised at the Public Hearing Described herein, or in Written Correspondence, Delivered to the City at, or Prior to, the Public Hearing.

A. Public Hearing – To Consider a Categorical Exemption from the California Environmental Quality Act (CEQA) and a Mobile Food Vendor Permit #2019-07 to Allow the Operation of a Mobile Food Vending Vehicle on Private Commercial Property for Jana Nairn dba The Tri-Tipery Located within the Highway-Commercial Zoning District at 1155 Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 026-280-007.

- 1) Planning Commission Resolution No. 2019-18 – Approving the Project to be Categorically Exempt from the California Environmental Quality Act (CEQA) Pursuant to Section 15311, Accessory Structures, and Approving Mobile Food Vendor Permit #2019-07 for the Operation of a Mobile Food Vending Unit to Vend on Private Commercial Property Located at 1155 Pacheco Boulevard, More Specifically Identified as Assessor's Parcel Number: 026-280-007.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

B. Public Hearing – To Consider and Make a Recommendation to the Los Banos City Council to Amend Chapter 3, Title 9, Article 34 of the Los Banos Municipal Code Related to Density Bonus.

- 1) Planning Commission Resolution No. 2019-19 – Recommending to the City Council Adoption of an Ordinance of the City Council of the City of Los Banos Amending and Restating Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code Regarding Density Bonuses and Other Affordable Housing Development Incentives.

*Recommendation: Receive staff report, open the public hearing, receive public comment, close the public hearing, and adopt the resolution as submitted.*

8. COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT REPORT
9. COMMISSIONER REPORTS
  - A. Cates
  - B. Dees
  - C. Giuliani
  - D. Higby
  - E. Toscano
10. ADJOURNMENT.

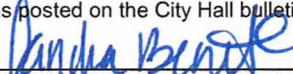
### **APPEAL RIGHTS AND FILING PROCEDURES**

Any person dissatisfied with an act or determination of the Planning Commission may appeal such act or determination to the Planning Commission by filing written notice with the Planning Commission Secretary not later than five (5) business days (excluding holidays) after the day on which the act or determination was made. An appeal must state the act or determination which is being appealed, the identity of the applicant and his/her interest in the matter, and set forth in concise statement(s) the reasons which render the Commission's decision unjustified or inappropriate. (Los Banos Municipal Code Section 9-3.2326)

Concerning an action taken by the Planning Commission related to Chapter 2 Articles 1 through 17 of the Los Banos Municipal Code "Subdivisions", if a subdivider or other affected property owner is dissatisfied with any action of the Commission with respect to a tentative map or the nature and extent of improvements recommended or required he/she may within fifteen (15) days after such action appeal to the Planning Commission Secretary for a public hearing on the matter. An appeal must state the action being appealed, identify the agenda item by agency number or project title, and set forth in concise statement(s) the reasons for the appeal. (Los Banos Municipal Code Sections 9-2.807)

Appeals must be in writing and include the appellant's name and address and original signature. A filing fee of \$150.00 must accompany the notice of appeal.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the City Hall bulletin board not less than 72 hours prior to the meeting.

  
\_\_\_\_\_  
Sandra Benetti, Planning Technician

Dated this 6<sup>th</sup> day of September 2019



**CITY OF LOS BANOS  
PLANNING COMMISSION MEETING MINUTES  
AUGUST 28, 2019**

*ACTION MINUTES – These minutes are prepared to depict action taken for agenda items presented to the Planning Commission. For greater detail of this meeting refer to the electronic media (CD and/or audio) kept as a permanent record.*

**CALL TO ORDER:** Chairperson Cates called the Planning Commission Meeting to order at the hour of 7:00 p.m.

**PLEDGE OF ALLEGIANCE:** The pledge of allegiance was led by Commissioner Giuliani.

**ROLL CALL – MEMBERS OF THE PLANNING COMMISSION PRESENT:** Planning Commission Members John Cates, Mona Giuliani, Thomas Higby III, and Susan Toscano; David Dees absent.

**STAFF MEMBERS PRESENT:** City Attorney William A. Vaughn, Community & Economic Development Director Stacy Elms, Associate Planner Rudy Luquin, and Planning Technician Sandra Benetti.

**CONSIDERATION OF APPROVAL OF AGENDA.** Motion by Giuliani, seconded by Higby to approve the agenda as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING OF JULY 10, 2019.** Motion by Giuliani, seconded by Higby to approve the minutes as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**CONSIDERATION OF APPROVAL OF THE ACTION MINUTES FOR THE ADJOURNED CITY COUNCIL/PLANNING COMMISSION MEETING OF AUGUST 14, 2019.** Motion by Giuliani, seconded by Higby to approve the minutes as submitted. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE PLANNING COMMISSION MEMBERS ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE.**

Chairperson Cates opened the public forum. No one came forward to speak and the public forum was closed.

Commissioner Toscano stated that she was unsure if she had a conflict for the upcoming item because she works at 549 N. Mercey Springs Road near the project site.

City Attorney Vaughn inquired if Commissioner Toscano owned the property where she worked, asked if they were a source of income to her, and asked she was a source of income to them.

Commissioner Toscano responded no to each question.

City Attorney Vaughn stated that there is no conflict and she may participate.

**PUBLIC HEARING – TO CONSIDER A SITE PLAN REVIEW #2019-03 FOR THE DEVELOPMENT OF ONE (1) COMMERCIAL STRUCTURE TOTALING 5,156 SQUARE FEET WITH SITE IMPROVEMENTS WITHIN THE GENERAL-COMMERCIAL ZONING DISTRICT AND A CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15332 IN-FILL DEVELOPMENT PROJECTS LOCATED AT 1101 F STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 025-152-009.**

Associate Planner Luquin presented the staff report, which included a PowerPoint presentation, and distributed revised elevations and floor plan that was received today.

Commissioner Giuliani spoke of her appreciation for the added hallway and landscaping.

Chairperson Cates opened the public hearing. No one came forward to speak and the public hearing was closed.

Motion by Higby, seconded by Giuliani to adopt Planning Commission Resolution No. 2019-16 – Approving Site Plan Review #2019-03 for the Development of One (1) 5,156 Square Foot Commercial Structure Along with Site Improvements within the General-Commercial Zoning District and a Categorical Exemption from the California Environmental Quality Act Pursuant to Section 15332, In-Fill Development Projects Located at 1101 F Street, More Specifically Identified as Assessor’s Parcel Number: 025-152-009. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**PUBLIC HEARING – TO CONSIDER A CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND A MOBILE FOOD VENDOR PERMIT #2019-06 TO ALLOW THE OPERATION OF A MOBILE FOOD VENDING VEHICLE ON PRIVATE PROPERTY FOR KENNETH LAMBERT DBA BIGGINS TEXAS BBQ LOCATED WITHIN THE PUBLIC-FACILITIES ZONING DISTRICT AT 520 WEST I STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR’S PARCEL NUMBER: 027-032-007.**

Associate Planner Luquin presented the staff report, which included a PowerPoint presentation.

Commissioner Giuliani inquired about parking, accessibility, and hours of operation.

Associate Planner Luquin responded that the applicant has already received a Temporary Mobile Food Vendor Permit at this location and no concerns have been brought to staff's attention, how the parking lot is in use and often at full capacity, and hours of operation will be Friday thru Sunday from 11:00 a.m. to 7:00 p.m.

Chairperson Cates opened the public hearing. No one came forward to speak and the public hearing was closed.

Commissioner Giuliani inquired about the business operations.

Kenneth Lambert, applicant, spoke of how he started out at the street fairs and tomato festival and had requests for him to open up a restaurant, how he has a different style of barbecue, how he is from Texas and brings Texan-style food, how he also has specialties, and wants to bring his style to the community.

Commissioner Giuliani inquired if he operated at other locations or if there will be other locations in the future.

Mr. Lambert responded that he has attempted to find other locations but it's been difficult.

Motion by Higby, seconded by Giuliani to adopt Planning Commission Resolution No. 2019-17 – Approving the Project to Be Categorically Exempt from the California Environmental Quality Act Pursuant to Section 15311, Accessory Structures, and Approving Mobile Food Vendor Permit #2019-06 for the Operation of a Mobile Food Vending Unit to Vend on Private Property Located at 520 West I Street, More Specifically Identified as Assessor's Parcel Number: 027-032-007. The motion carried by the affirmative action of all Planning Commission Members present; Dees absent.

**DESIGN REVIEW STUDY SESSION – ESTABLISHMENT OF ONE (1) MODULAR BUILDING TOTALLING 2,208 SQUARE FEET FOR A MULTI-PURPOSE ROOM INCLUDING CLASS SPACE AND AN ASSEMBLY/SOCIAL HALL FOR FIRST BAPTIST CHURCH LOCATED IN THE LOW-DENSITY RESIDENTIAL (R-1) ZONING DISTRICT ADJACENT TO 819 D STREET, MORE SPECIFICALLY IDENTIFIED AS ASSESSOR'S PARCEL NUMBERS: 025-092-002, 003, 004.** Associate Planner Luquin presented the staff report, which included a PowerPoint presentation.

Ramon Sanchez, California Shine & Construction, was present to answer questions.

Roy Mitchell, First Baptist Church, was present to answer questions.

There was discussion among Commissioners, staff, and the applicant regarding architecture including design, color, façade, stucco to match the church, and temporary partitions within the building.

Chairperson Cates suggested that the applicant consider the matching the exterior design color and materials to the existing church building, suggested breaking up the massing, and inquired about parking.

Community & Economic Development Director Elms spoke of parking being based on whether it's a fellowship hall or a classroom and stated that the parking requirements are different for those uses.

There was discussion among Commissioners, staff, and the applicant regarding lighting including how they will have to meet city standards.

There was discussion among Commissioners, staff, and the applicant regarding landscaping including the type of vegetation and fencing.

Informational item only, no action taken.

### **COMMUNITY & ECONOMIC DEVELOPMENT DIRECTOR REPORT.**

Community & Economic Development Director Elms reported that there was a City Council request made at the last City Council meeting to analyze a Planning Commission attendance policy and reduce the number of seats from 7 to 5 members, how this item will be brought to the City Council on September 4<sup>th</sup> agenda for discussion, how staff conducted research and will be recommending by-district representation and moving down to 5 members, how she will report back to Planning Commission after that City Council meeting, how the Community & Economic Development Department will have a part-time employee that will be starting on September 3<sup>rd</sup>, how they probably won't see the employee at Planning Commission meetings, but will likely see her at the Community & Economic Development window at City Hall.

### **PLANNING COMMISSION MEMBER REPORTS.**

**CATES:** Thanked staff for their work.

**DEES:** Absent.

**GIULIANI:** Thanked staff for their work and was pleased with the City Council/Planning Commission study session that took place on August 14, 2019.

**HIGBY:** Thanked staff for their work.

**TOSCANO:** No report.

**ADJOURNMENT:** The meeting was adjourned at the hour of 7:41 p.m.

APPROVED:

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John Cates, Chairperson

ATTEST:

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Sandra Benetti, Planning Technician





City of  
**Los Banos**  
*At the Crossroads of California*

**PLANNING COMMISSION STAFF REPORT**

**TO:** CHAIRMAN CATES AND PLANNING COMMISSIONERS  
**FROM:** RUDY LUQUIN, ASSOCIATE PLANNER *RL*  
**FOR:** SEPTEMBER 11, 2019  
**SUBJECT:** MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY-  
JANA NAIRN

**RECOMMENDATION:**

That the Planning Commission adopt Resolution No. 2019-18 approving the proposed project to be categorically exempt from the California Environmental Quality Act pursuant to Section 15311, Accessory Structures and approving Mobile Food Vendor Permit #2019-07 for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard, Assessor's Parcel Number: 026-280-007.

**PROJECT BACKGROUND/DESCRIPTION:**

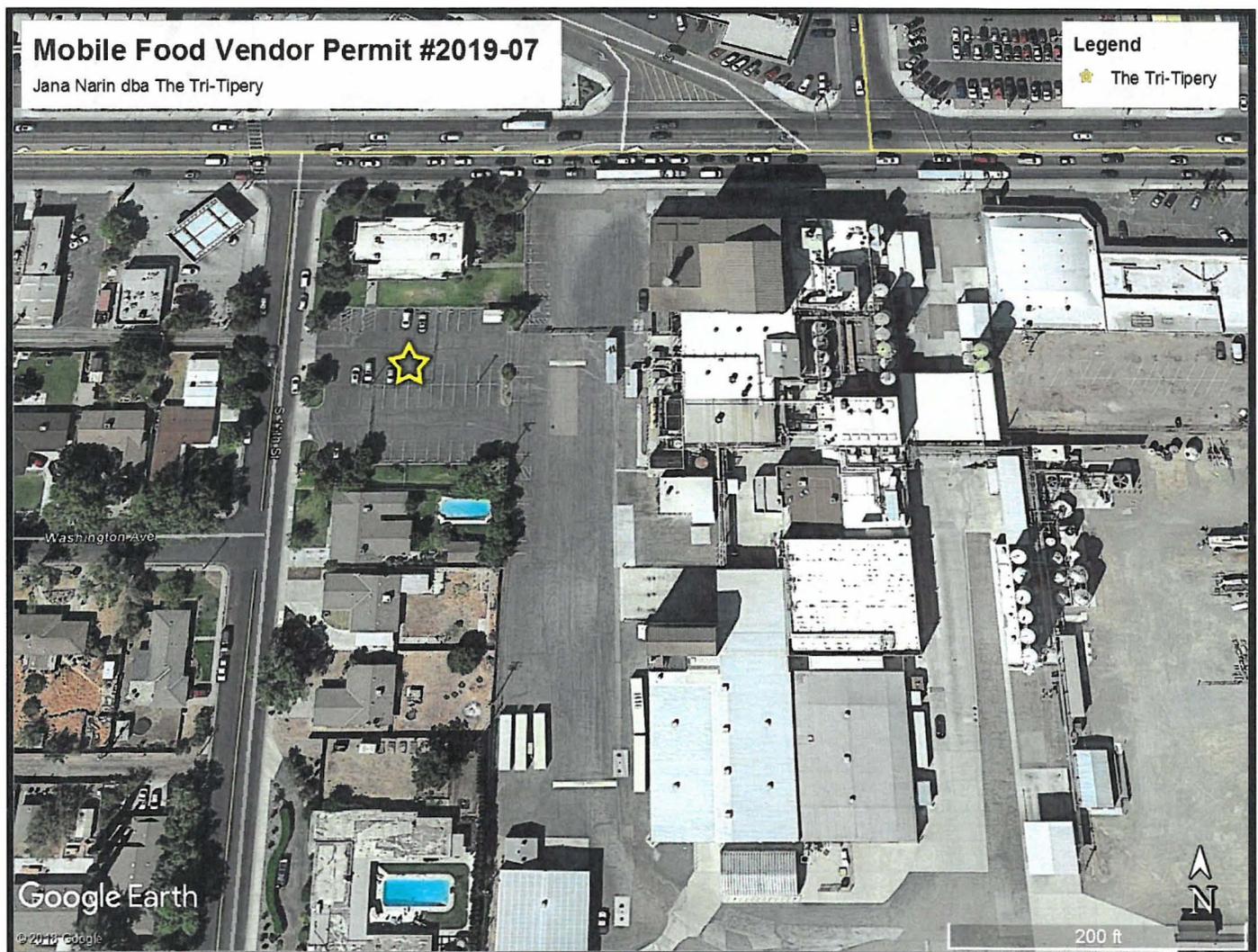
In accordance with the Los Banos Municipal Code Title 9 Chapter 3 Article 36 Mobile Food Vending, the general purpose is to promote the health, safety, comfort, convenience, prosperity and general welfare of the citizens, businesses and visitors of the City of Los Banos by requiring that mobile food vendors provide the community and customers with a minimum level of cleanliness, quality, safety and security. This article also provides mobile food vendors with clear and concise regulations to prevent safety, traffic and health hazards as well as to preserve the peace, safety and welfare of the community.

The City of Los Banos Community & Economic Development Department received a request for a mobile food vendor permit for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard (Century 21 M&M Associates). The proposed mobile food vending unit will operate occasionally, one day per week or one day per month depending on demand, serving lunch from 11:00 a.m. to 2:00 p.m. and dinner from 4:00 p.m. to 8:00 p.m. The proposed mobile food

vending operation will consist of three (3) employees at this time. The mobile vending unit will be on site during proposed business hours and off site when not operating.

**LOCATION AND ACCESS:**

The proposed mobile vending location is at 1155 Pacheco Boulevard; APN: 026-280-007. The mobile food vending unit will be located in a parking stall within the parking lot of the Century 21 M&M Associates. The project site can be accessed from South Eleventh Street. The specific location of the proposed mobile unit is detailed in the yellow star below.



**VENDOR PERMIT ANALYSIS**

***Code Requirements***

According to the Los Banos Municipal Code, the Planning Commission is the decision making authority for any initial application of a permit to operate a mobile vending unit, once the initial permit is approved, subsequent permits are approved by the Community

and Economic Development Director. Furthermore, mobile vendors located on private property are subject to the following conditions Section 9-3.3606(b):

1. Be incidental to a primary use with a valid Business License; a mobile vending unit shall not be the primary use of a parcel. Mobile vending units shall not be permitted as an accessory use to a standalone parking lot.

*The primary use of the property is a real estate office which has a valid Business License. The mobile food vending unit will be an accessory use to the main and primary real estate office use of the property.*

2. Be located in a Commercial or Industrial zoning district. Mobile vendors shall not be located on private property in a residential zoning district.

*The subject property site is located at 1155 Pacheco Boulevard which is within the Highway Commercial Zoning District (H-C), which is private property that is used for commercial uses.*

3. Not be located on a vacant parcel.

*The mobile food vending unit will be located on an improved parcel with an existing parking lot and commercial structure.*

4. Be located on pavement/concrete per City standards.

*The mobile food vending unit will be stationed on a parking lot that is consistent with City Standards and Specifications.*

5. Not utilize, or be located on, parking spaces required for the primary use. At least two onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.

*The project site contains more than sufficient parking as the proposed mobile food vendor location is within the parking lot of the Century 21 M&M Associates business location.*

6. Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.

*The operation and location of the proposed mobile food vending unit will not interfere or obstruct any of the access, driveways, aisles, traffic circulation, or fire lanes and hydrants within the property. The proposed mobile food vending unit will operate in safe manner as determined by the Community and Economic Development Department.*

7. Comply with the requirements of the Merced County Environmental Health Department.

*The applicant presently has a Merced County Department of Environmental Health Permit to operate the proposed mobile food vehicle. The applicant will comply with all the rules, regulations and requirements presented by the Merced County Environmental Health Department.*

8. Not interfere with pedestrian movement or create a hazard for pedestrians.

*The proposed mobile food vending unit will not disrupt pedestrian movement nor will it create a hazard for pedestrians as the proposed site location for the mobile vending unit is on private property within a parking stall and will not obstruct any pedestrian walkways.*

Staff has determined that the proposed vendor permit is consistent with Los Banos Municipal Code Title 9 Chapter 3 Article 36. Conditions of approval have been incorporated into the project to make certain that the applicant conforms to the required level of cleanliness, quality, safety and security required by the Los Banos Municipal Code.

**Existing Vendor Permits**

Currently there are nine (9) active mobile vendor permits in the City. The following is a list of Vendor Permits approved by the Planning Commission for operation on private property:

<b>Business Name</b>	<b>Business Owner</b>	<b>Location</b>	<b>Vendor Type</b>
Junior's Tacos	Antemio & Gabriela Cortes	740 G St	Taco Truck
El Grullense, Jal	Leobardo Oliva	531 Mercey Springs Rd.	Taco Truck
Tacos & Mariscos Las Brasas	Natividad Parra	403 N. Mercey Springs Rd.	Taco Truck
Tacos El Jefe	Christian Mendoza	1155 I St.	Taco Truck
Taco Face	Rosa Orozco	310 W. Pacheco Blvd.	Taco Truck
A-1 Water Quality	Roger Pires	1248 E. Pacheco Blvd.	Water Truck
Tacos La Bonita	Eliseo Jarrillo	140 W. Pacheco Blvd.	Taco Truck
El Gurellense, Jal #6	Jaidel Perez	1301 W. Pacheco Blvd.	Taco Truck
Biggins Texas BBQ	Kenneth Lambert	520 W. I St.	BBQ Truck

The existing mobile vendor locations are marked in red and the proposed mobile unit is marked in white on the following map:



**PUBLIC COMMENT:**

A public hearing notice was published in the Los Banos Enterprise on Friday, August 30, 2019. As of the date of this staff report no comments have been received.

**APPLICABLE ORDINANCES/GUIDELINES:**

Los Banos Municipal Code – LBMC Title 9 Chapter 3 Article 36

**RECOMMENDATIONS:**

That the Planning Commission adopt Resolution No. 2019-18 approving the proposed project to be categorically exempt from the California Environmental Quality Act pursuant to Section 15311, Accessory Structures and approving Mobile Food Vendor Permit #2019-07 for the operation of a mobile food vending unit to vend on private commercial property located at 1155 Pacheco Boulevard, Assessor's Parcel Number: 026-280-007.

**ATTACHMENTS:**

1. Resolution #2019-18
  - Exhibit A CEQA Findings
  - Exhibit B Project Findings
  - Exhibit C Conditions of Approval
2. Truck Photos
3. Site Plan
4. Merced County Environmental Health Permit

5. Public Hearing Notice – August 30, 2019

## RESOLUTION NO. 2019-18

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS APPROVING THE PROJECT TO BE CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15311, ACCESSORY STRUCTURES AND APPROVING MOBILE FOOD VENDOR PERMIT #2019-07 FOR THE OPERATION OF A MOBILE FOOD VENDING UNIT TO VEND ON PRIVATE COMMERCIAL PROPERTY LOCATED AT 1155 PACHECO BOULEVARD, ASSESSOR'S PARCEL NUMBER: 026-280-007.**

WHEREAS, the applicant, Jana Nairn, d.b.a: The Tri-Tipery, has filed an application with the City of Los Banos for a Mobile Food Vendor Permit to allow the operation of a mobile food vending unit on private commercial property located at 1155 Pacheco Boulevard; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the City of Los Banos Environmental Quality Guidelines, Mobile Food Vendor Permit #2019-07 for The Tri-Tipery was determined to be Categorically Exempt from the provisions of CEQA per Article 19, Section 15311 as the project meets all the criteria for an Accessory Structures and it can be seen with certainty that the proposed project would not have a significant effect on the environment; and

WHEREAS, a public hearing notice was advertised in the Los Banos Enterprise on Friday, August 30, 2019, in accordance with the Los Banos Municipal Code and California Government Code Section 65091; and

WHEREAS, the Los Banos Planning Commission held a public hearing on September 11, 2019, at which time interested persons had an opportunity to provide testimony; and

WHEREAS, the Los Banos Planning Commission, heard and considered testimony, if any, of all persons desiring to be heard, and reviewed said Vendor Permit request and staff report, and considered the applicant's request in accordance with the Vendor Permit criteria established in the Los Banos Municipal Code Title 9 Chapter 3 Article 36; and

BASED ON THE EVIDENCE PRESENTED AT THE PUBLIC HEARING the Planning Commission of the City of Los Banos hereby makes the findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that based upon the foregoing the Planning Commission of the City of Los Banos does hereby approve Mobile Food Vendor Permit #2019-07 to permit the use of a mobile food vending unit to operate on private commercial property, located at 1155 Pacheco Boulevard, APN: 026-280-007, within the City of Los Banos, subject to the Conditions of Approval set forth in Exhibit C, attached hereto and incorporated herein by this reference.

The foregoing resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 11<sup>th</sup> day of September 2019 by Planning Commissioner \_\_\_\_\_ who moved its adoption, which motion was duly seconded by Planning Commissioner \_\_\_\_\_, and the Resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
John Cates, Planning Commission Chairman

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary

## EXHIBIT A

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS FOR MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)**

Pursuant to the requirements of California Public Resources Code Section 21000 et seq. (CEQA) and Title 14, California Code of Regulations 15000 et seq. (the CEQA Guidelines), the City as Lead Agency under CEQA adopts the following findings required by CEQA, along with the facts and evidence upon which each finding is based.

The City of Los Banos Planning Commission hereby finds the proposed mobile vendor permit appropriate for the Highway Commercial Zoning District (H-C) as follows:

1. Pursuant to CEQA, the CEQA Guidelines, and the City of Los Banos Environmental Guidelines, Mobile Food Vendor Permit #2019-07 was evaluated within the context of those guidelines and found to be categorically exempt from the provisions of CEQA – Article 19, Section 15311.
2. Mobile Food Vendor Permit #2019-07 was adequately noticed and circulated for public review and comment on August 30, 2019 for consideration at a public meeting on September 11, 2019 and no comments were received.
3. No further environmental documentation is required as the Mobile Food Vendor Permit was contemplated and adequately analyzed in the initial review.
4. Prior to considering the proposed Project, the Planning Commission considered the Categorical Exemption.



## EXHIBIT B

### FINDINGS FOR APPROVAL FOR MOBILE FOOD VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)

#### FINDINGS FOR APPROVAL:

The City of Los Banos Planning Commission hereby finds as follows:

1. The applicant has provided all of the information to the Community and Economic Development Department as required by the Mobile Food Vendor Ordinance.
2. The proposed operation is consistent with the criteria and requirements of the Mobile Food Vendor Ordinance as follows:

- a) Be incidental to a primary use with a valid Business License; a mobile vending unit shall not be the primary use of a parcel. Mobile food vending units shall not be permitted as an accessory use to a standalone parking lot.

*The primary use of the property is a real estate office for Century 21 M&M Associates, which has a valid Business License. The mobile food vending unit will be an accessory use to the main and primary use of the property.*

- b) Be located in a Commercial or Industrial zoning district. Mobile vendors shall not be located on private property in a residential zoning district.

*The subject property site is located at 1155 Pacheco Boulevard, which is within the Highway Commercial Zoning District (H-C), which is private property that is used for commercial uses.*

- c) Not be located on a vacant parcel.

*The mobile food vending unit will be located on an improved parcel with an existing parking lot and commercial structure.*

- d) Be located on pavement/concrete per City standards.

*The mobile food vending unit will be stationed on a parking lot that is consistent with City Standards and Specifications.*

- e) Not utilize, or be located on, parking spaces required for the primary use. At least two onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.

*The project site contains more than sufficient parking as the proposed mobile food vendor location is within the parking lot of the Century 21 M&M Associates business location.*

- f) Not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.

*The operation and location of the proposed mobile food vending unit will not interfere or obstruct any of the access, driveways, aisles, traffic circulation, or fire lanes and hydrants within the property. The proposed mobile food vending unit will operate in safe manner as determined by the Community and Economic Development Department.*

- g) Comply with the requirements of the Merced County Environmental Health Department.

*The applicant presently has a Merced County Department of Environmental Health Permit to operate the proposed mobile food vehicle. The applicant will comply with all the rules, regulations and requirements presented by the Merced County Environmental Health Department.*

- h) Not interfere with pedestrian movement or create a hazard for pedestrians.

*The proposed mobile food vending unit will not disrupt pedestrian movement nor will it create a hazard for pedestrians as the proposed site location for the mobile vending unit is on private property within a parking stall and will not obstruct any pedestrian walkways.*

## EXHIBIT C

### CONDITIONS OF APPROVAL FOR MOBILE VENDOR PERMIT #2019-07 – THE TRI-TIPERY (JANA NAIRN)

#### Community and Economic Development:

1. The operation of the Mobile Vending Unit shall at all times comply with the requirements of the Los Banos Municipal Code, the Conditions of Approval for Mobile Food Vendor Permit #2019-07 including but not limited to the application on file with the Community and Economic Development Department. Should there be a conflict, the Municipal Code and the Conditions of Approval shall control.
2. The Mobile Food Vendor Permit is to allow for a mobile food vending unit to operate on private commercial property, in the location depicted in the application, located at 1155 Pacheco Boulevard; the permit shall expire one (1) year from date of issuance.

The applicant shall comply with all other requirements, laws and policies of other governmental agencies in the conduct and operation of said business including the Merced County Environmental Health Department.

3. The mobile food vendor shall have a valid City of Los Banos Business License and renew such license each year.
4. The mobile food vending unit shall be moved off-site when not in operation.
5. A background check through the Los Banos Police Department must be obtained for the mobile food vendor and each person operating or vending out of the mobile unit prior to issuance of a Business License.
6. The applicant shall comply with the applicable requirements of the Los Banos Municipal Code including but not limited to the following:
  - a. The operation shall not interfere with access, driveways, aisles, circulation or fire lanes and hydrants and shall not operate in a place where the operation will create an unsafe condition.
  - b. The mobile food vendor shall display, in plain view and at all times, current permits and licenses.

- c. While vending, drive wheels of the mobile food vending unit shall be chocked in such a manner as to prevent movement.
- d. The permitted hours of operation are from 11:00 a.m. to 8:00 p.m.
- e. The mobile food vending unit shall be entirely self-sufficient in regard to gas, water and telecommunications.
- f. The mobile food vendor shall not discharge items onto the sidewalk, gutter, storm drainage inlets or streets.
- g. The mobile food vending unit shall be maintained in a safe and clean manner at all times.
- h. No tables, chairs, fences, shade structures or other site furniture, (permanent or otherwise) or any free standing signs shall be permitted in conjunction with the mobile food vendor.
- i. Any site improvements required for mobile vendor operations shall require application for the appropriate permits to ensure building and public safety and consistency.
- j. Exterior storage of refuse, equipment or materials associated with the mobile food vendor is prohibited.
- k. The mobile food vendor operating the mobile food vending unit as defined by the Health and Safety Code shall operate out of a commissary pursuant to Health and Safety Code Section 114295.
- l. The mobile food vending unit shall be equipped with refuse containers large enough to contain all refuse generated by the operation of such a unit, and the vendor of the mobile unit shall pick up all refuse generated by such operation on the lot before such unit is moved at the close of business each day. The mobile vendor shall not dispose of any trash or refuse in any such public or private trash receptacle other than a trash receptacle owned, operated or otherwise provided by and under the control of such vendor.
- m. The mobile food vendor shall install signage in a visible location on the mobile vending unit indicating that loitering is not permitted.
- n. The mobile food vendor shall enforce the no loitering rule.
- o. The mobile food vending unit shall be located on an improved surface at all times.

7. The mobile food vending unit shall obtain Fire Department approval and shall be subject to inspection by the Los Banos Fire Department prior to issuance or renewal of a business license involving use of the mobile vending unit if the unit contains any combustibles (i.e. propane, natural gas).
8. The mobile food vending unit shall comply with California Fire Code, California Code of Regulations, and California Mechanical Code. Should any utility hook-ups or connections to on-site utilities be used or required, the mobile food vendor shall be required to apply for appropriate permits or receive approval by the appropriate City department to ensure building and public safety and consistency with applicable building and zoning regulations.
9. The applicant agrees to indemnify, hold harmless, and defend the City of Los Banos, its officers, agents and employees from any and all liability or claims that may be brought against the City of Los Banos arising out of its approval of this permit, or the environmental determination rendered in connection with the permit approval, or arising out of the operation of the use or uses allowed under the permit, save and except that caused solely by the City's active negligence.
10. The mobile food vending unit shall not be inconsistent with the Conditions of Approval and shall not be operated in a manner that deviates from the approved vendor permit, which shall constitute a violation and may result in the revocation or modification of the permit upon written notice to the owner of the subject unit.
11. The operation of Mobile Food Vendor Permit #2019-07 shall be located at 1155 Pacheco Boulevard south of the real estate office not obstructing parking, pedestrian walkways or vehicular traffic. Relocation of the mobile unit on site shall only occur with prior approval by the Community and Economic Development Director or designee or Planning Commission.
12. At least two (2) onsite parking spaces, in addition to those required for the primary use shall be provided for the mobile vending unit operation.





The **TRI-TIPERY**

Food Truck

HOME OF THE  
FAMOUS WAGON WHEEL!



WWW.TRITIPERY.COM

APR California  
75477K2

Ag Link  
FOOD HUB

Ag Link



California -  
75477K2  
dmv.ca.gov



The **BERRY** Food Truck

HOME OF THE FAMOUS WAGON WHEEL!

WWW.TRITTPEERY.COM



NO PARKING

XTRIBEST

THE TITRIBEST  
TRUCKS FOR THE  
OUTRIGGER



THE TRI-TIPERY  
BOLLING, CA 95003  
508-836-9448

20

The TRI-TIPERY  
Food Truck

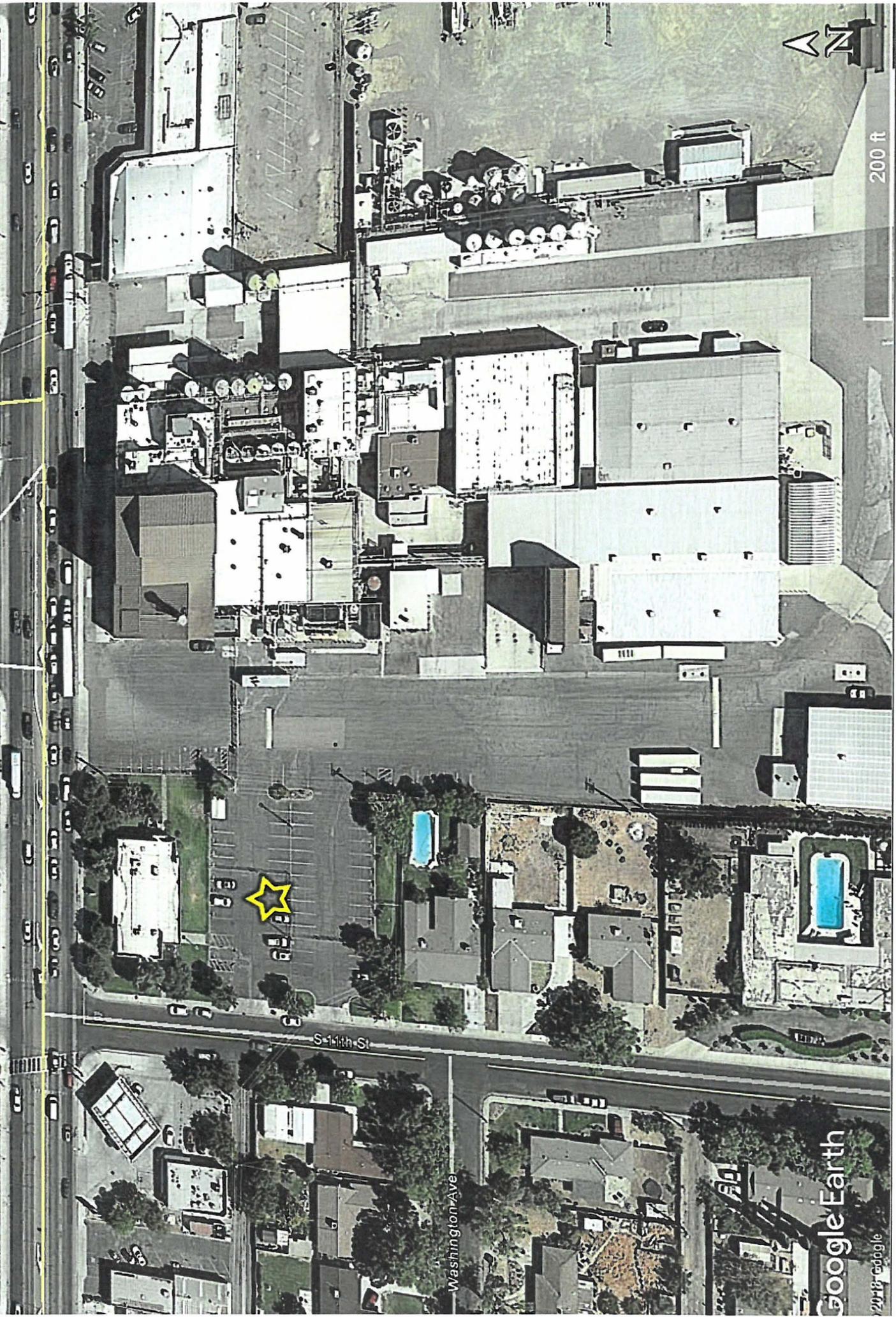
The TRI-TIPERY  
Food Truck

# Mobile Food Vendor Permit #2019-07

Jana Narin dba The Tri-Tipery

## Legend

 The Tri-Tipery



Google Earth

© 2019 Google

200 ft



H90500  
Merced County Public Health  
Division of Environmental Health  
260 E. 15th Street  
Merced, CA 95341-6216

The Tri-Tipery Food Truck  
PO Box 12  
Ballico, CA 95303

Attached to the bottom of this letter is your Health Permit to Operate. **The permit is valid only upon receipt of all required invoiced fees and penalties (if any), AND compliance with state, federal and local regulations.**

Facilities operating without a valid permit will be subject to **administrative penalties equal to three times the full annual permit fee and/or potential late payment penalties.** Facilities operating without a valid permit may be subject to closure. After 90 days, any unpaid invoice balances will be sent to Revenue and Reimbursement (collections).

This permit and the permit fees are **ONLY** valid for the business and owner named below and are **not transferable** to any other person, business, or facility.

If you have any questions regarding this matter, please call our office at (209) 381-1100.

Run 11/28/2018 4:00:15PM

FOLD FORM HERE AND DISPLAY PROMINENTLY WITHIN CUSTOMER VIEW ON THE PREMISES

5303.rpt (updated 11/28/2018)



**MERCED COUNTY DEPARTMENT OF PUBLIC HEALTH  
DIVISION OF ENVIRONMENTAL HEALTH**

260 E. 15th Street, Merced, CA 95341  
(209) 381-1100 Fax (209) 384-1593

<http://www.co.merced.ca.us/eh>

Equal Opportunity Employer

**Health Permit to Operate**

Valid from 1/1/2019 to 12/31/2019

REGULATED FACILITY:

The Tri-Tipery Food Truck  
11359 Newport Road  
Ballico, CA 95303

Facility ID: FA0008723  
Account ID: AR0017990  
Issued: 11/28/2018

OWNER NAME:

Jana Nairn

Program Element Number and Description

0143 MOBILE FOOD FAC (MOBILE FOOD PREP UNIT)

Permit ID #      Units

PT0014467      PR0018761

Permit is not valid until all permit fees are paid in full. Permits to operate and Annual Fee Payments are NOT TRANSFERABLE. This permit is valid ONLY for this owner, Jana Nairn. New owners must apply and pay for a new Permit(s) PRIOR to beginning operation or penalties will be assessed.

MOBILE FOOD PREP UNITS MUST COMPLY WITH LOCAL PLANNING REGULATIONS.

**THIS FORM MUST BE CONSPICUOUSLY DISPLAYED ON THE PREMISES**

Vicki Jones, MPA, REHS  
Interim Director of Environmental Health





City of  
**Los Banos**  
*At the Crossroads of California*

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**COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT**

Date: August 30, 2019

Regarding: Notice of Public Hearing

Proposal: Mobile Food Vendor Permit #2019-07 – Jana Nairn (dba The Tri-Tipery)

NOTICE IS HEREBY GIVEN THAT a Public Hearing will be held by the Los Banos Planning Commission to consider a Categorical Exemption from the California Environmental Quality Act (CEQA) and a Mobile Food Vendor Permit #2019-07 to allow the operation of a mobile food vending vehicle on private commercial property for Jana Nairn dba The Tri-Tipery. The subject property is located within the Highway Commercial Zoning District at 1155 Pacheco Boulevard, more specifically identified as Assessor's Parcel Number: 026-280-007.

A PUBLIC HEARING on this matter will be held at the next scheduled meeting of the Los Banos Planning Commission on Wednesday, September 11, 2019 at 7:00 p.m. in the Council Chambers of Los Banos City Hall, located at 520 "J" Street, Los Banos, California. Questions regarding the above-referenced item may be directed to Rudy Luquin, Associate Planner, at City Hall or at (209) 827-2432.

All persons are invited to be present at the public hearing. Written and oral testimony is invited. Notice is hereby further given that if you challenge the above described Project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this Notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

Additional information may be obtained from the Community & Economic Development Department at 520 J Street, Los Banos, California. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (209) 827-7000. Notification at least 72 hours prior to the public hearing will enable the City to make reasonable arrangements to allow participation at this hearing

THE CITY OF LOS BANOS

  
Rudy Luquin  
Associate Planner





City of  
**Los Banos**  
*At the Crossroads of California*

**Agenda Staff Report**

**TO:** Chairman Cates and Planning Commissioners

**FROM:** Stacy Souza Elms, Community and Economic Development Director  
William A. Vaughn, City Attorney

**DATE:** September 11, 2019

**TYPE OF REPORT:** Public Hearing

**SUBJECT:** Density Bonus and other Affordable Housing Development Incentives Ordinance.

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**RECOMMENDATION**

Adopt Planning Commission Resolution No. 2019-19:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING AND RESTATING ARTICLE 34 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER AFFORDABLE HOUSING DEVELOPMENT INCENTIVES

**BACKGROUND**

Pursuant to Government Code Section 65915(a)(1), all local governments are required to adopt local ordinances that are consistent with State law. The City of Los Banos last amended its local Density Bonus ordinance in 2010; since that time a series of legislative updates *have* been adopted at the state level concerning affordable housing and in particular density bonus'.

Therefore, the City's current ordinance is in need of updating to ensure that it is in full compliance with state law.

The following provides a brief summary of each piece of adopted legislation followed by the recommended revisions to the City's density bonus ordinance. The full text of the proposed ordinance revisions are provided within Attachment 1. Staff has also included the full text of Government Code Sections 65915 and 65915.7 as Attachments 2 and 3 respectively, and the summary sheet for each adopted bill as Attachment 4.

## **DISCUSSION**

### **Assembly Bill 2222, effective January 1, 2015**

In September, 2014, Assembly Bill (AB) 2222 was signed into law to amend *several* aspects of the state density bonus law. Prior to the bill, affordable units provided to qualify for density bonuses were subject to affordable income restrictions for a period of 30 years; AB 2222 extended the affordability term to 55 years.

Additionally, AB 2222 introduced an affordable-unit replacement requirement in an effort to help address the potential displacement of existing tenants. The bill requires that projects using a density bonus replace rental units that *have* been occupied by *very* low or low-income households within the *five-year* period preceding the development application.

Applicants could elect to either:

- provide replacement units of equivalent or greater number to units that are occupied by lower income households or subject to a rent or price control; or
- ensure that units are affordable to *very* low-, or low-income households.

The replacement provisions contained in AB 2222 were substantially expanded and clarified in the January, 2017 amendments adopted through AB 2556

### **Proposed Ordinance Amendments:**

Section 9-3.3404(d) has been added to reflect the new required term of 55 years. Section 9-3.3403(b) has been added to clarify eligibility requirements for proposed housing developments involving property containing existing affordable housing units.

### **Assembly Bill 744, effective January 1, 2016**

Assembly Bill 744 was adopted in 2015. The bill required that local governments, upon request from an applicant developing a rental housing project that is density bonus eligible, grant further reductions in parking requirements depending on the project's proximity to transit. The provisions of AB 744 expand the parking reduction options available to developers that were provided in the state density bonus law.

Jurisdictions may however require higher parking ratios for housing near transit if the City has completed a parking study within the last seven years that supports the need for more parking.

### **Proposed Ordinance Amendments:**

Sections 9-3.3412 of the proposed Ordinance has been revised to reflect the parking allowances outlined in AB 744. Also, the definition of "Major Transit Stop" (as defined in Public Resources Code Section 21064.3) has been added to Section 9-3.3402 of the proposed Ordinance.

### **Assembly Bill 1934, effective January 1, 2017**

AB 1934 expanded the state law to provide incentives for commercial developers to contribute to affordable housing through creation of Government Code Section 65915.7.

The bill provided a bonus for commercial developers that enter an agreement with a housing developer to provide affordable units in a joint mixed-use project, or as two separate but related projects. Commercial developers must define how they are contributing to the affordable housing development; three options are recognized by the state law.

- The commercial developer may directly build the units.
- The commercial developer may donate a portion of the development site, or property located elsewhere, to the housing developer to build affordable housing.
- The commercial developer may make a cash payment to the housing developer to offset the construction cost for affordable housing.

To qualify for the density bonus, the proposed affordable units must contain a prescribed number of low- or very-low income units: at least 30% of the total units proposed shall be for low-income households, or at least 15% shall be for very low-income households. If the affordable units are to be constructed off-site (separate) from the non-residential development, the units must be located on a site that is:

- within the local jurisdiction;
- near public amenities, including schools and employment centers; and
- located within one-half mile of a major transit stop.

The provisions of AB 1934 do not prevent an affordable housing developer from utilizing the density bonus, concession or incentives, waivers or reductions that are available through the state law. Furthermore, the amendments did not reduce or waive affordable housing impact fees that may apply to commercial projects in the jurisdiction. The provisions of AB 1934 are subject to a sunset clause of January 1, 2022.

### **Proposed Ordinance Amendments:**

Definitions for "Commercial Development Bonus", was added to reflect the provisions outlining partnered housing in Government Code Section 65915.7. Section 9-3.3415 provides the requirements for a commercial developer to participate in the commercial development bonus mandated by Government Code Section 65915.7.

### **Assembly Bill 2442, effective January 1, 2017**

Assembly Bill 2442 amends Section 65915(b) to include additional categories of specialized housing that would qualify a project for a density bonus. If at least 10% of the proposed units in a project are designated for very-low income households for a period of 55 years, and are targeted to the following specialized housing types, they may qualify for a density bonus:

- transitional foster youth as defined in Education Code Section 66025.9
- disabled veterans as defined in Government Code Section 18541
- homeless persons as defined in 42 U.S.C. Sec. 11301 et seq.

The density bonus for these projects is 20% of the provided specialized housing units.

### **Proposed Ordinance Amendments:**

Definitions for "Transitional Foster Youth", "Disabled Veteran", and "Homeless Persons" were added to Section 9-3.3402. The required reservation requirement was outlined in Section 9-3.3404, and the amount of density bonus granted for qualifying projects has been added to Section 9-3.3403.

### **Assembly Bill 2501, effective January 1, 2017**

AB 2501 streamlines density bonus application processing in recognition of the financial implications for developers caused by permitting delays. Streamlining changes are described in Government Code Section 65915(a)(3); these changes require that local jurisdictions:

- Adopt procedures and timelines for processing density bonus applications.
- Provide a list of all information required to be submitted with the density bonus application for the density bonus application to be deemed complete.
- Issue completeness determinations on applications within 30 days in compliance with Government Code Section 65943.

AB 2501 includes several additional clarifications and procedural amendments to aid in the application and enforcement of the state law.

- Local governments are prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies that are not described in the state law. Cities can however require "reasonable documentation" to establish eligibility for incentives or concessions, waivers or reductions, or reduced parking ratios.

- The burden of proof for denying a requested concession or incentive is placed more directly on local jurisdictions, with clarifying language on determining whether a concession or incentive results in cost reductions in support of affordable housing development. The bill amends Section 65915(d)(1)(A), the first finding of fact to deny a requested concession or incentive. Local jurisdictions must grant the requested concession or incentive unless it "does not result in identifiable and actual cost reductions," to provide for affordable housing. The revised language clarifies that jurisdiction shall determine whether a concession or incentive is financially sufficient.

### **Proposed Ordinance Amendments:**

Section 9-3.3413 has been updated to include specific application requirements related to a requested density bonus, incentive, waiver, parking reduction, or commercial development bonus. Section 9-3.3410(c) has been revised to reflect the required finding associated with identifiable and actual cost reductions.

### **Assembly Bill 2556, effective January 1, 2017**

As described above, AB 2222 amended the state law in 2014 to preserve existing affordable housing units by prohibiting an applicant from receiving a density bonus, incentive, concession, waiver or reduction, if a development removed units that at any time in the five-year period preceding the application were occupied by lower-income households or subject to a form of rent control. AB 2222 is reflected in the Government Code Section 65915(c), and includes the stipulation that projects may overcome this restriction by replacing affordable units with units of equivalent affordability, size and/or type. AB 2222 failed to clarify how replacement unit requirements should be determined if resident income levels were not verifiable.

AB 2556 (2017) provides clarifying language to satisfy the replacement unit requirements in the State Law, including:

- Projects shall provide at least an equal number of replacement units of equivalent size and affordability. Equivalent size means providing at least the same total number of bedrooms.

- For currently-occupied units that would be removed, if the income level of the household is not known, it shall be presumed that the building is occupied by the same proportion of lower income renter households to all renter households as is the case for the jurisdiction as a whole.

- For buildings vacated or demolished within five (5) years of the development application, if the income level of the last occupants in previously existing units is not known it shall be presumed that very low- and low-income households occupied the units in the same proportion of very low- and low-income renter households to all renter households in the jurisdiction.

**Proposed Ordinance Amendments:**

The definition of "Equivalent Size" has been included in Section 9-3.3402. The proposed application submittal requirements for projects seeking a density bonus, outlined in Section 9-3.3413, includes the requirement to submit a description and tenant income information of all occupied or .previously occupied dwelling units at the proposed project site for the five-year period preceding submittal of the density bonus application.

**Senate Bill 1227, effective January 1, 2019**

SB 1227 allows developers to request a 35% density bonus for development with at least 20% of units reserved for lower income students in a dedicated student housing project.

**Proposed Ordinance Amendments:**

Reservation requirements, consistent with the requirements outlined in Government Code Section 65915, have been included in Section 9-3.3403 for student housing projects. The amount of density bonus for student housing projects meeting the required reservation requirements has been included in Section 9-3.3405.

**Assembly Bill 2753, effective January 1, 2019**

AB 2753 Requires cities to provide an applicant with a determination as to the amount of density bonus and any parking ratios requested by the applicant for which the development is eligible and whether the applicant has provided adequate information to make a determination as to any incentives, concessions, or waivers or reductions to development standards requested by the applicant.

**Proposed Ordinance Amendments:**

The application requirements for density bonus requests outlined in Section 9-3.3413, requires the applicant to provide the relevant information for the City to make a determination on their request on a particular provision afforded under the density bonus provisions.

## **Assembly Bill 2797, effective January 1, 2019**

AB 2979 requires that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted in a manner that is consistent with that law and the California Coastal Act of 1976.

### **Proposed Ordinance Amendments:**

Not applicable to the City.

### **CONCLUSION**

Density bonus is state law, covered under California Government Code Section 65915, that allows developers to increase density at a given project site above the maximum allowable density of a given parcel under its General Plan Land Use designation. In exchange for additional density, a certain number of dwelling units are required to be reserved, for a period of not less than 55 years, for very low, low, moderate-income households, seniors, transitional foster youth, disabled veterans, homeless persons, or low-income students.

The revisions to proposed Ordinance are intended to provide consistency with state law and clarification regarding the implementation of state mandated regulations as specified in Government Code Section 65915. As noted in Government Code Section 65915(a)(1), cities are required to adopt an ordinance that specifies how compliance with state law will be implemented. Failure to adopt an ordinance does not relieve a city from complying with state law. Incorporating the proposed revisions would bring the City's Affordable Housing Density Bonus ordinance into full compliance with state law.

### **ENVIRONMENTAL REVIEW**

The proposed project is an update to Article 34 of Title 9 of the Comprehensive Zoning Ordinance for consistency with existing state law. The proposed project would not, in and of itself, occasion land development or any other material change to the environment. Projects subject to the amended provisions would be subject to a separate CEQA review.

Therefore, the proposed ordinance does not propose any changes to City policies or regulations that would result in a direct or indirect physical environmental impact; therefore it has been determined that the proposed ordinance is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment pursuant to CEQA guidelines Section 15061 (b)(3) and is not subject to environmental review.

Attachments:  
Resolution 2019-19  
Proposed ordinance  
Resource materials

## RESOLUTION NO. 2019-19

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOS BANOS RECOMMENDING TO THE CITY COUNCIL ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS BANOS AMENDING AND RESTATING ARTICLE 34 CHAPTER 3 OF TITLE 9 OF THE LOS BANOS MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER AFFORDABLE HOUSING DEVELOPMENT INCENTIVES**

WHEREAS, the City of Los Banos currently implements the State of California mandated affordable homes density bonus regulations as required by Section 65915 of the California Government Code, including the related incentives and concessions;

WHEREAS, the purpose of the proposed ordinance is to amend Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code to incorporate recent amendments to California Government Code Section 65915, which requires local agencies to provide incentives or concessions to developers in order to promote the production of housing for very low, low and moderate income households and senior citizens.

WHEREAS, September 11, 2019, the Planning Commission conducted a duly noticed public hearing to consider the proposed amendment to Article 34 Chapter 3 of Title 9 of the Los Banos Municipal Code

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Planning Commission finds that the proposed ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines (Chapter 3 of Title 14 of the California Code of Regulations beginning at Section 15000), specifically: Section 15060(c)(2), because the proposed ordinance will not result e in the environment; and Section 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance consists of state-mandated updates to land use regulations for projects that, where applicable, receive individualized CEQA review. Any future development that has the potential to cause a significant effect on the environment will be evaluated through a separate environmental review process in accordance with CEQA. As such, it can be seen with certainty that there is no possibility that the proposed ordinance may have a significant adverse effect on the environment.

2. The Planning Commission finds that the proposed ordinance is consistent with the City's General Plan.

3. The Planning Commission recommends that the City Council of the City of Los Banos consider and approve the attached Ordinance of the City Council of the City of Los Banos Amending and Restating Article 34 Chapter 3 of Title 9 of the Los Banos

Municipal Code Regarding Density Bonuses and other Affordable Housing Development Incentives.

The foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Los Banos held on the 11th day of September 2019, by Planning Commissioner \_\_\_\_\_ who moved its adoption, which motion was duly seconded by Planning Commissioner \_\_\_\_\_ and the Resolution adopted by the following vote:

AYES:  
NOES:  
ABSENT:

APPROVED:

\_\_\_\_\_  
John Cates, Planning Commission Chairman

ATTEST:

\_\_\_\_\_  
Sandra Benetti, Planning Commission Secretary

## **Article 34. Density Bonuses and other Affordable Housing Incentives**

### **Sec. 9-3.3401 Purpose and intent.**

This Article is intended to provide density bonuses and incentives or concessions for the production of housing that is affordable to the types of households and qualifying residents identified in this Article in accordance with Sections 65915 through 65918 of the California Government Code, as amended or superseded. In enacting these provisions, it is the intent of the City of Los Banos to facilitate the development of affordable housing and to implement the requirements of Government Code Section 65915 et. seq. and the goals, objectives, and policies of the Housing Element of the City's General Plan. Where regulations are not specifically addressed in this Article or where there are conflicts between these provisions and the provisions of California Government Code sections 65915 through 65918, the provisions of California Government Code, as they may be amended over time, shall apply.

### **Sec. 9-3.3402 Definitions.**

For the purpose of this Article, the following meanings and definitions shall apply:

(a) "Affordable rent" has the definition and meaning set forth in California Health and Safety Code section 50053.

(b) "Affordable housing cost" has the definition and meaning set forth in California Health and Safety Code Section 50052.5.

(c) "Child care facility" means a 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 as defined by California Government Code Section 65915(h).

(d) "Commercial development bonus" means a modification of development standards mutually agreed upon by the City and a commercial developer that is provided to a commercial development eligible for such a bonus pursuant to Section 9-3.3414.

(e) "Concession" or "Incentive" has the definition and meaning set forth in California Government Code Section 65915(k) and means any of the following:

(1) A reduction in 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results 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).

(2) 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.

(3) Other regulatory incentives or concessions proposed by the developer or the City, 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).

This definition does not limit or require the provision of direct financial incentives for a housing development, including the provision of publicly owned land, by the City or the waiver of fees or dedication requirements.

(f) "Common interest development" has the definition and meaning set forth in California Civil Code Section 1351.

(g) "Density bonus," means a density increase over the otherwise maximum allowable gross residential density under the applicable zoning code provisions and the land use element of the general plan as of the date of application by the applicant to the City.

(h) "Density bonus housing agreement" means a legally binding agreement between a developer and the City to ensure that the requirements of this Article are satisfied. The agreement, among other things, shall establish: the number of target units, their size, location, terms and conditions of affordability, and production schedule.

(i) "Density bonus units" means those residential units granted pursuant to the provisions of this Article, which exceed the otherwise maximum residential density of the underlying land use designation and zoning district for the development site.

(j) "Development standard" means the site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, or other city condition, law, policy, resolution or regulation including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio as defined by California Government Code Section 65915(o).

(k) "Disabled veteran" has the definition and meaning set forth in California Government Code Section 18541.

(l) "Equivalent Size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced as defined by California Government Code Section 65915(c)(3)(D).

(m) "Homeless person" has the definition and meaning set forth in 42 U.S.C. Section 11301 et.seq.

(n) "Housing cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale target units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

(o) "Housing development" means any construction projects consisting of five (5) or more residential units, including single-family, multi-family, and mobile homes for sale or rent, pursuant to this Article.

(p) "Lower income households" has the definition and meaning set and meaning forth in Section 50079.5 of the California Health and Safety Code.

(q) "Major transit stop" has the definition set forth in California Public Resources Code Section 21155.

(r) "Maximum residential density" means the maximum number of residential units permitted by the City's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Article. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

(s) "Moderate income households" has the definition and meaning set forth in Section 50093 of the California Health and Safety Code.

(t) "Non-restricted unit" means all units within a housing development excluding the target units.

(u) "Qualifying resident" means senior citizens or other persons eligible to reside in senior citizen housing.

(v) "Senior citizen housing development" has the definition and meaning set forth in California Civil Code Section 51.3.

(w) "Specific Adverse Impact", as defined in the California Government Code Section 65589.5(d)(2), means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Inconsistency with zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact on public health or safety.

(x) "Target unit" means a dwelling unit within a housing development which will be reserved for sale or rent, and is made available at an affordable rent or affordable ownership cost, to very low, lower, or moderate income households, or is a unit in a senior citizen housing development, or is intended to serve transitional foster youth, disabled veterans, or homeless persons, and which qualifies the housing development for a density bonus and incentives pursuant to Section 9-3.3403 or qualifies a commercial development for a commercial development bonus pursuant to Section 9-3.3413.

(y) "Transitional foster youth" has the definition and meaning set forth in California Education Code Section 66025.9.

(z) "Very low income households" has the definition and meaning set forth in Section 50105 of the California Health and Safety Code.

**Sec. 9-3.3403 Eligibility for density bonus, incentives, or concessions.**

(a) The City shall grant a density bonus, in the amount specified in Section 9-3405, to an applicant who proposes a housing development consisting of five (5) or more residential units and meeting at least one (1) of the following criteria:

(1) At least ten percent (10%) of the total units of the housing development as target units affordable to lower income households, as defined in California Health and Safety Code Section 50079.5; or

(2) At least five percent (5%) of the total units of the housing development as target units affordable to very low income households, as defined in California Health and Safety Code Section 50105; or

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

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

(5) At least ten percent (10%) of the total number of proposed units of housing for transitional foster youth, as defined in Section 66025.9 of the California Education Code, disabled veterans, as defined in Section 18541 of the California Government

Code, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act; or

(6) At least twenty percent (20%) of the total number of proposed units for lower income students in a student housing development that meets the requirements, as defined by California Government Code Section 65915.

(b) An applicant is not eligible for a density bonus, or any other incentives or concessions under this Article, for a proposed housing development involving a property containing existing affordable housing, unless:

(1) The proposed housing development replacement units of equivalent size for the existing affordable housing units; and

(2) Either:

(A) The proposed housing development, inclusive of the replacement units at the percentages set forth in this Section; or

(B) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

**Section 9-3.3404 Requirements; Continued Affordability.**

In addition to any other applicable requirements set forth in this Article the following requirements shall apply to all developments receiving a density bonus pursuant to this Article.

(a) A target unit shall be restricted and affordable to the designated income group qualifying the development for a density bonus pursuant to Section 9-3.3403.

(b) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. For the purposes of this Section, the project's income restricted units would be considered proportional to square footage if they are at least eighty percent (80%) of the average square footage of all market rate units in the development with the same bedroom count. Further, the range of affordable units must be reasonably dispersed throughout the development.

(c) Target units shall be constructed concurrently with market-rate units or pursuant to a schedule included in the density bonus housing agreement. No temporary or permanent certificate of occupancy for any new market-rate unit in a housing development or for commercial space in a commercial development shall be issued until permanent certificates of occupancy have been issued for the required target units unless explicitly permitted by the density bonus housing agreement or partnered housing agreement. If a development project is to be phased, the target units shall be phased in the same proportion as the market rate units, or as set forth in a

schedule included in the density bonus housing agreement or partnered housing agreement.

(d) The time period of availability to the intended population shall be for at least fifty five (55) years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(e) The maximum allowable rents shall be determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the California Government Code.

(f) Owner occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the California Health and Safety Code.

(g) For sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.

(h) The owner of the affordable units for which a density bonus was granted must provide to the City a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

**Section 9-3.3405 Calculation of density bonus.**

(a) A housing development that complies with the eligibility requirements in Section 9-3.3403 shall be entitled to a density bonus as follows, unless a lesser percentage is proposed by the applicant:

(1) Bonus for units for lower income households. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(1) (ten percent (10%) of units for lower income households) shall be entitled to a density bonus calculated as follows:

**BONUS FOR LOWER INCOME HOUSEHOLDS**

<b>Percentage Lower Income Units Proposed</b>	<b>Percentage Density Bonus</b>
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**BONUS FOR LOWER INCOME  
HOUSEHOLDS**

<b>Percentage Lower Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) Bonus for units for very low income households. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(2) (five percent (5%) of units for very low-income households) shall be entitled to a density bonus calculated as follows:

**BONUS FOR VERY LOW INCOME  
HOUSEHOLDS**

<b>Percentage Very Low Income Units Proposed</b>	<b>Percentage Density Bonus</b>
5	20
6	22.5

**BONUS FOR VERY LOW INCOME**

**HOUSEHOLDS**

<b>Percentage Very Low Income Units Proposed</b>	<b>Percentage Density Bonus</b>
7	25
8	27.5
9	30
10	32.5
11	35

(3) Bonus for senior citizen development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(3) (senior citizen development or mobile home park) shall be entitled to a density bonus of twenty percent (20%).

(4) Bonus for moderate-income units in common interest development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(4) (ten percent (10%) of units in a common interest development for persons and families of moderate income) shall be entitled to a density bonus calculated as follows:

**BONUS FOR MODERATE INCOME HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	5
11	6
12	7
13	8

**BONUS FOR MODERATE INCOME  
HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28

**BONUS FOR MODERATE INCOME HOUSEHOLDS**

<b>Percentage Moderate Income Units Proposed</b>	<b>Percentage Density Bonus</b>
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) Bonus for transitional foster youth, disabled veterans, or homeless persons development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(5) (transitional foster youth, disabled veterans, or homeless persons) shall be entitled to a density bonus of twenty percent (20%).

(6) Bonus for lower income students in a student housing development. A housing development that is eligible for a bonus in compliance with the criteria in Section 9-3.3403(a)(6) (lower income students in student housing) shall be entitled to a density bonus of thirty-five percent (35%).

(b) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.

(c) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval.

(d) An applicant may elect to accept a lesser percentage of density bonus.

(e) The calculations herein are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

(f) Each housing development is entitled to only one density bonus mandated by this Section. If a housing development qualifies for a density bonus under more than one income category or additionally as senior housing or as housing intended to serve

transitional foster youth, disabled veterans, or homeless persons, the applicant shall select the category under which the density bonus is granted. Density bonuses from more than one category may not be combined.

**Sec. 9-3.3406 Additional density bonus for land donation.**

(a) When an applicant for a tentative subdivision map, parcel map, or other residential zoning entitlement development donates land to the City for the purpose of constructing affordable housing, the applicant shall be entitled to a fifteen (15%) percent increase above the maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development as follows:

**BONUS FOR LAND DONATION**

<b>Percentage Very Low-Income Units Proposed</b>	<b>Percentage Density Bonus</b>
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28

**BONUS FOR LAND DONATION**

<b>Percentage Very Low-Income Units Proposed</b>	<b>Percentage Density Bonus</b>
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(b) The increase in density set forth in this Section for land donation shall be in addition to any increase in density mandated by Section 9-3.3403 up to a maximum combined mandated density increase of thirty-five (35%) percent, if an applicant seeks both density increases.

(c) Nothing in this Section shall be construed to enlarge or diminish the authority of the City to require a developer to donate land as a condition of development.

(d) An applicant shall be eligible for the increased density bonus described in this Section if all of the following conditions are met:

(1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent (10%) of the number of residential units of the proposed development.

(3) The transferred land is at least one (1) acre in size or of sufficient size to permit development of at least forty (40) units and required amenities, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and

infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible.

(4) No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low-income housing units on the transferred land, except that the City may subject the proposed development to subsequent design review to the extent authorized by California Government Code Section 65583.2(i) if the design is not reviewed by the City prior to the time of transfer.

(5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Section 9-3.3404, which shall be recorded on the property at the time of dedication.

(6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.

(7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

**Sec. 9-3.3407 Additional density bonus and incentives for developments with childcare facilities.**

(a) When an applicant proposes to construct a housing development that conforms to the density bonus requirements of Section 9-3403, and includes a child care facility other than a large or small family day care home that will be located on the premises of, as part of, or adjacent to the project, the development shall be eligible for the following additional bonus and incentives.

(b) City shall grant to eligible housing developments either of the following:

(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 child care facility;  
or

(2) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(c) The City shall require, as a condition of approving the housing development that the following occur:

(1) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.

(2) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low-income households, lower income households, or families of moderate income pursuant to the density bonus requirements of Section 9-3.3403.

(d) Notwithstanding the above requirements, the City shall not be required to provide a density bonus or concession for a child care facility in compliance with this Section if it finds, based upon substantial evidence, that the community has adequate child care facilities.

#### **Sec. 9-3408 Condominium conversions.**

(a) The City shall grant either a density bonus or other incentives of equivalent financial value if the applicant for a condominium conversion agrees to provide thirty-three percent (33%) of the total units of the proposed condominium project as target units affordable to lower or moderate income households, or to provide fifteen percent (15%) of the total units in the condominium conversion project as target units affordable to lower income households, and to provide any replacement affordable units required by Section 9-3.3403. All such target units shall remain affordable for the period specified in Section 9-3.3404.

(b) For purposes of this Section, a “density bonus” means an increase in units of twenty-five percent (25%) over the number of apartments to be provided within the existing structure or structures proposed for conversion. “Other incentives of equivalent financial value” shall not be construed to require the City to provide a cash transfer payment or other monetary compensation of any type but may include, at the City’s discretion, modification of requirements that the City might otherwise apply as conditions of approval.

(c) No condominium conversion shall be eligible for a density bonus if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were previously provided pursuant to this Article or California Government Code Section 65915.

(d) Nothing in this section shall be construed to require the City to approve a condominium conversion.

#### **Sec. 9-3.3409. City discretion**

(a) Nothing in this Article shall be construed to prohibit the City from granting a density bonus greater than what is described in this Article for a development that

meets the requirements of this Article, or from granting a proportionately lower density bonus than what is required by this Article for developments that do not meet the requirements of this Article.

(b) Circumstances may arise in which the public interest would be served by allowing some or all of the target units associated with one housing development to be produced and operated at an alternative development site. Where the developer and the City form such an agreement, the resulting linked developments shall be considered a single housing development for purposes of this Article. Under these circumstances, the developer shall be subject to the same requirements of this Article for the target units to be provided on the alternative site.

### **Sec. 9-3.3410 Incentives and concessions.**

(a) An applicant for a density bonus in compliance with this Article may submit to the City a proposal for the specific incentives or concessions listed in subsection (c) of this Section that the applicant requests in compliance with this Section, and may request a meeting with the Community and Economic Director or his or her designee. The applicant may file a request either before filing an application for City approval of a proposed project or concurrently with an application for project approval.

(b) The applicant shall receive the following number of incentives or concessions:

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

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

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

(c) The City shall grant an incentive or concession request that complies with this Section unless the City makes either of the following findings in writing, based upon substantial evidence:

(1) The concession or incentive does not result in identifiable and actual cost reductions, consistent with Government Code 65915(k), 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 65915(c) and this Article.

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

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

(d) This Section does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the City, or the waiver of fees or dedication requirements.

(e) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a General Plan amendment, Zoning Map amendment, or other discretionary approval.

**Sec. 9-3.3411 Waiver or reductions of development standards.**

(a) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of 9-3.3403 at the densities or with the concessions or incentives permitted under this Article, and may request a meeting with the City.

(b) Nothing in this Section shall be interpreted to require the City to waive or reduce development standards if the waiver or reduction 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.

(c) Nothing in this Section shall be interpreted to require the City to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(d) A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to this Article.

**Sec.9-3.3412 Parking adjustment/modification in density bonus projects.**

(a) Upon the request of the applicant, the City will not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of Section 9-3.3403 that exceeds the following ratios:

- (1) Zero to one bedrooms: one onsite parking space.
- (2) Two to three bedrooms: two onsite parking spaces.
- (3) Four and more bedrooms: two and one-half parking spaces.

(b) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .5 onsite parking spaces per bedroom, for a development meeting the criteria of Section 9-3.3403, that is located within .5 miles of a major transit stop, and has unobstructed access to the major transit stop.

(c) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .5 onsite parking spaces per unit for a development that consists solely of rental units (exclusive of a manager's unit) with an affordable housing cost to lower income households, and is either:

- (1) Located within .5 miles of a major transit stop, and has unobstructed access to the major transit stop; or
- (2) A for rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the California Civil Code, and has either paratransit service, or unobstructed access to a fixed bus route service that is within .5 miles and operates at least eight times per day.

(d) The applicant may apply for a vehicular parking ratio, inclusive of handicapped and guest parking, that does not exceed .3 onsite parking spaces per unit, for a development that consists solely of rental units (exclusive of a manager's unit) with an affordable housing cost to lower income households, and is a special needs housing development, and has either paratransit service, or unobstructed access to a fixed bus route service that is within .5 miles and operates at least eight (8) times per day.

(e) If the total number of parking spaces required for a development is other than a whole number, the number will be rounded up to the next whole number. For purposes of this Section, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through on-street parking.

(f) This section applies to a development that meets the requirements of Section 9-3.3403, but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this Section, subject to Section 9-3.3410.

(g) Notwithstanding sub sections (b) (c) and (d) , if the City or an independent consultant has conducted an area-wide or jurisdiction-wide parking study in the last seven (7) years, then the City may impose a higher vehicular parking ratio, not to exceed the ratio described in subsection (a), based upon substantial evidence found in the parking study that includes an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low and very low income individuals, including seniors and special needs individuals. The City will pay the costs of any new study. The City may make findings, based on a parking study completed in conformity with this Section, supporting the need for the higher parking ratio.

**Sec. 9-3.3413 Application and review.**

(a) An application for a density bonus, incentive, concession, waiver, modification, modified parking standard, or commercial development bonus pursuant to this Article shall be submitted with the first application for approval of a housing development or commercial development and processed concurrently with all other applications required for the housing development or commercial development. An applicant shall be informed whether the application is complete consistent with Government Code Section 65943.

(b) The application shall be submitted on a form prescribed by the City including all applicable fees for processing the application, and shall include at least the following information:

(1) Site plan drawn to scale showing total number of units, number and location of target units, and number and location of proposed density bonus units.

(2) Summary table showing the maximum number of units permitted by the zoning and general plan excluding any density bonus units, proposed target units by income level, proposed bonus percentage, number of bonus units proposed, and total number of dwelling units proposed on the site.

(3) Tenure (rental versus for-sale) of target units and proposals for ensuring affordability.

(4) A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If any dwelling units on the site are currently rented, the income and household size, if known, of all residents of currently occupied units. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size, if known, of residents occupying dwelling units when the site contained the maximum number of dwelling units.

(5) Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very low or lower income households in the five-year period preceding the date of submittal of the application.

(6) Description of any requested incentives, concessions, waivers or modifications of development standards, or modified parking standards.

(7) For all incentives and concessions except mixed-use development, to establish eligibility for the requested incentives and concessions, the application shall include evidence that the requested incentives and concessions result in identifiable and actual cost reductions, including the actual cost reduction achieved through the incentive, and evidence that the cost reduction allows the applicant to provide affordable rents or affordable ownership costs.

(8) If a mixed-use building or project is proposed as an incentive, the applicant shall provide evidence that nonresidential land uses will reduce the cost of the residential project, and that the nonresidential land uses are compatible with the residential project and the existing or planned surrounding development.

(9) For waivers or modifications of development standards, the application shall provide evidence that the development standard for which the waiver is requested will have the effect of physically precluding the construction of the housing development with the density bonus and incentives requested.

(10) If a parking reduction is requested, a table showing parking required by the zoning ordinance and proposed parking. If a parking reduction provided by Section 9-3.3412(b) (c) or (d) is requested, evidence that the project is eligible for the requested parking reduction.

(11) If a density bonus or concession 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 findings included in Section 9-3.3406(d) can be made.

(12) If a commercial development bonus is requested for a commercial development, the application shall include the proposed partnered housing agreement, the proposed commercial development bonus, and evidence that each of the standards included in Section 9-3.3413(a) through (d) has been met.

(13) If a density bonus or concession is requested for a child care facility, the application shall show the location and square footage of the child care facilities and provide evidence that each of the findings included in Section 9-3.3407(c) can be made.

(14) If a density bonus or incentive is requested for a condominium conversion, the application shall provide evidence that all of the requirements found in Section 9-3.3408 can be met.

(c) In accordance with state law, neither the granting of a concession or incentive, nor the granting of a density bonus, shall be interpreted, in and of itself, to require a general plan amendment, zoning change, variance, or other discretionary approval.

(d) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

(e) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.

(f) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action, including the otherwise required conditional use permit necessary to exceed the base density of a given General Plan Land Use designation category or zoning district.

**Sec. 9-3.3414 Density bonus housing agreement required.**

(a) Applicants requesting a density bonus shall enter into a density bonus housing agreement with the City in a form approved by the City Attorney.

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

**Section 9-3.3415 Commercial development density bonus.**

(a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the City will grant the commercial developer a development bonus as described in this Section.

(b) The commercial developer must enter into an agreement for partnered housing between a commercial developer and a housing developer that is approved by the City, and identifies how the commercial developer will contribute affordable housing within the City. The commercial developer must partner with a housing developer partner that provides no less than either thirty percent (30%) of the total units for low-income households or fifteen percent (15%) of the total units for very low income households.

(c) The commercial developer may contribute affordable housing by directly building the affordable housing units, donating property to the affordable housing developer as a site for affordable housing, making a cash payment to the affordable housing developer for use towards the cost of constructing the affordable housing project.

(d) Housing must be constructed on the site of the commercial development or on a site that meets all of the following:

- (1) Within the boundaries of the City;
- (2) Within close proximity to public amenities, including schools and employment centers; and
- (3) Within one-half mile of a major transit stop.

(e) The development bonus granted to the commercial developer means incentives, mutually agreed upon by the developer and the City, including any of the following:

- (1) Up to a twenty percent (20%) increase in maximum allowable intensity in the General Plan.
- (2) Up to a twenty percent (20%) increase in maximum allowable floor area ratio.
- (3) Up to a twenty percent (20%) increase in maximum height requirements.
- (4) Up to a twenty percent (20%) reduction in minimum parking requirements.
- (5) Use of a limited-use/limited-application elevator for upper floor accessibility.
- (6) An exception to a zoning ordinance or other land use regulation.

(f) If construction of the affordable units do not commence within the timelines specified by the agreement for partnered housing, then the City may withhold certificates of occupancy for the commercial development until the construction of the affordable housing units are complete.



# Guide to the California Density Bonus Law

BY JON GOETZ AND TOM SAKAI

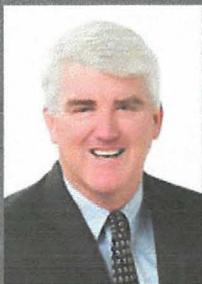
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## ABOUT THE AUTHORS



### JON GOETZ

E-mail: [jgoetz@meyersnave.com](mailto:jgoetz@meyersnave.com)  
Direct: 800.464.3559

Jon Goetz is a Principal at Meyers Nave. He has over 30 years of experience in real estate, land use, environmental, redevelopment, housing and municipal law. Jon represents private and public entities in complex real estate development transactions, land use planning, public-private development, infrastructure financing and affordable housing. He has advised on acquiring, financing, leasing and disposing of all forms of improved and unimproved property.



### TOM SAKAI

E-mail: [tsakai@springbrookadvisors.com](mailto:tsakai@springbrookadvisors.com)  
Direct: 949.833.2599

Tom Sakai is the Principal of Springbrook Realty Advisors, Inc., a real estate consulting practice located in Newport Beach. His practice specializes in consulting to land developers and homebuilders, focusing on pro formas and feasibilities for master-planned communities, school negotiations, assessment district and Mello-Roos financing, affordable housing issues, and other services to the real estate industry.



# Introduction and Overview

Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build or donate land for affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 35% increase in project densities, depending on the amount of affordable housing provided. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, and incentives and concessions such as reduced setback and minimum square footage requirements. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. A developer who meets the requirements of the state law is entitled to receive the density bonus and other benefits as a matter of right. As with any state mandate, some local governments will resist complying with the state requirement. But many local governments favor the density bonus as a helpful tool to cut through their own land use requirements and local political issues.
- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.
- Special development bonuses are available for developers of commercial projects who partner with affordable housing developers to provide onsite or offsite affordable housing. Special bonuses are also available for condominium conversion projects and projects that include child care facilities.
- The Legislature has recently added density bonuses for housing developments for foster youth, disabled veterans, homeless persons and college students.

## How the Density Bonus Works

### PROJECTS ENTITLED TO A DENSITY BONUS

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- At least 10% of the housing units are for transitional foster youth, disabled veterans or homeless persons, with rents restricted at the very low income level.
- At least 20% of the housing units are for low income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobilehome park age-restricted to senior citizens (no affordable units required).

### DENSITY BONUS AMOUNT

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level, as shown in the chart on the following page.



## DENSITY BONUS CHART\*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS	LAND DONATION DENSITY BONUS	SENIOR***	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	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%	27.5%	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%	20%	35%
21%	35%	35%	16%	26%	20%	20%	35%
22%	35%	35%	17%	27%	20%	20%	35%
23%	35%	35%	18%	28%	20%	20%	35%
24%	35%	35%	19%	29%	20%	20%	35%
25%	35%	35%	20%	30%	20%	20%	35%
26%	35%	35%	21%	31%	20%	20%	35%
27%	35%	35%	22%	32%	20%	20%	35%
28%	35%	35%	23%	33%	20%	20%	35%
29%	35%	35%	24%	34%	20%	20%	35%
30%	35%	35%	25%	35%	20%	20%	35%
31%	35%	35%	26%	35%	20%	20%	35%
32%	35%	35%	27%	35%	20%	20%	35%
33%	35%	35%	28%	35%	20%	20%	35%
34%	35%	35%	29%	35%	20%	20%	35%
35%	35%	35%	30%	35%	20%	20%	35%
36%	35%	35%	31%	35%	20%	20%	35%
37%	35%	35%	32%	35%	20%	20%	35%
38%	35%	35%	33%	35%	20%	20%	35%
39%	35%	35%	34%	35%	20%	20%	35%
40%	35%	35%	35%	35%	20%	20%	35%

\*All density bonus calculations resulting in fractions are rounded up to the next whole number.

\*\*Affordable unit percentage is calculated excluding units added by a density bonus.

\*\*\*No affordable units are required for senior units.

## REQUIRED INCENTIVES AND CONCESSIONS

In addition to the density bonus, the city or county is also required to provide one or more “incentives” or “concessions” to each project which qualifies for a density bonus (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing, do not appear to be entitled to incentives or concessions). A concession or incentive is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed use zoning; or
- Other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project:

NO. OF INCENTIVES/ CONCESSIONS	VERY LOW INCOME PERCENTAGE	LOWER INCOME PERCENTAGE	MODERATE INCOME PERCENTAGE
1	5%	10%	10%
2	10%	20%	20%
3	15%	30%	30%

The city or county is required to grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law. The Density Bonus Law restricts the types of information and reports that a developer may be required to provide to the local jurisdiction in order to obtain the requested incentive or concession. The local jurisdiction has the burden of proof in the event it declines to grant a requested incentive or concession. Financial incentives, fee waivers and reductions in dedication requirements may be, but are not required to be, provided by the city or county. The developer may be entitled to the incentives and concessions even without a request for a density bonus.

## OTHER FORMS OF ASSISTANCE

A development qualifying for a density bonus also receives two additional forms of assistance which have important benefits for a housing project:

- **Waiver or Reduction of Development Standards.** If any other city or county development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. The city or county is not required to waive or reduce development standards that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. The waiver or reduction of a development standard does not count as an incentive or concession, and there is no limit on the number of development standard waivers that may be requested or granted. Development standards which have been waived or reduced utilizing this section include setback, lot coverage and open space requirements, and should apply to building height limits as well. This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus.

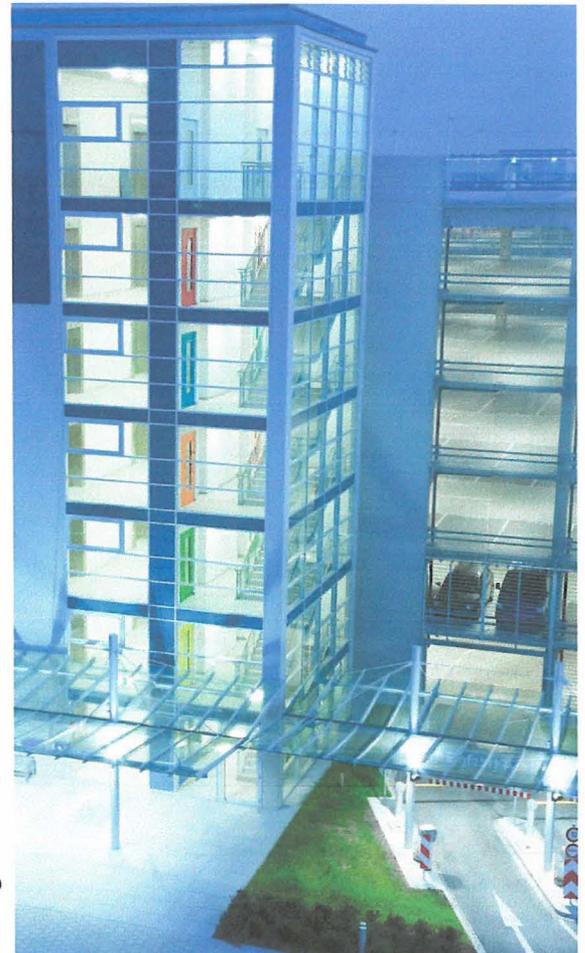
- **Maximum Parking Requirements.** Upon the developer’s request, the city or county may not require more than the following parking ratios for a density bonus project (inclusive of handicapped and guest parking):

Studio	1 space
1 Bedroom	1 space
2 Bedroom	2 spaces
3 Bedroom	2 spaces
4 Bedroom	2.5 spaces

- **Special Parking Requirements.** Lower parking ratios apply to specified projects (although local jurisdictions can require higher parking ratios if supported by a specified parking study):

Rental/for sale projects with at least 11% very low income or 20% lower income units, within 1/2 mile of accessible major transit stop	0.5 spaces per bedroom
Rental projects 100% affordable to lower income, within 1/2 mile of accessible major transit stop	0.5 spaces per unit
Rental senior projects 100% affordable to lower income, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0.5 spaces per unit
Rental special needs projects 100% affordable to lower income households, with paratransit service or within 1/2-half mile of accessible bus route (operating at least eight times per day)	0.3 spaces per unit

Onsite spaces may be provided through tandem or uncovered parking, but not onstreet parking. Requesting these parking standards does not count as an incentive or concession, but the developer may request further parking standard reductions as an incentive or concession. This is one of the most important benefits of the density bonus statute. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units. In higher density developments requiring the use of structured parking, the construction cost of structured parking is very expensive, costing upwards of \$20,000 per parking space. While this provision of the density bonus statute can be used to reduce excessive parking requirements, care must be taken not to impact the project’s marketability by reducing parking to minimum requirements which lead to parking shortages.



**AFFORDABLE HOUSING RESTRICTIONS**

- **Rental Units.** Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. As of January 1, 2015, the income and rent restrictions must remain in place for a 55 year term for very low or lower income units (formerly only a 30 year term was required). Rents must be restricted as follows:
  - For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.

- For lower income units, rents may not exceed 30% x 60% of the area median income for a household size suitable for the unit.
- Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
- Rents must include a reasonable utility allowance.
- Household size appropriate to the unit means 1 for a studio unit, 2 for a one bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.

In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units.

- **For Sale Units.** Affordable for sale units must be sold to the initial buyer at an affordable housing cost. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.
  - For very low income units, housing costs may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
  - For lower income units, housing costs may not exceed 30% x 70% of the area median income for a household size suitable for the unit.
  - For moderate income units, housing costs may not exceed 35% x 110% of the area median income for a household size suitable for the unit.
  - Buyers must enter into an equity sharing agreement with the city or county, unless the equity sharing requirements conflict with the requirements of another public funding source or law. The equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city or county a portion of any appreciation received on resale.
  - The city/county percentage of appreciation is the purchase price discount received by the original buyer, plus any down payment assistance provided by the city/county. (For example, if the original sales price is \$200,000, and the original fair market value is \$250,000, and there is no city/county down payment assistance, the city/county subsidy is \$50,000, and the city/county's share of appreciation is 20%).
  - The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of the appreciation.
  - The income and affordability requirements are not binding on resale purchasers (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years).



## **LOCAL GOVERNMENT PROCESSING OF DENSITY BONUS APPLICATIONS**

Under new legislation effective in 2019, local governments are now required to notify developers what information must be submitted for a complete density bonus application. Once a development application is determined to be complete, the local government must notify the developer the level of density bonus and parking ratio the development is eligible to receive. If the developer requests incentives, concessions, waivers or reductions of development standards, the local jurisdiction is required to notify the developer if it has submitted sufficient information necessary for the local government to make a determination on those issues.

## **HOW THE DENSITY BONUS WORKS FOR SENIOR PROJECTS**

As shown in the Density Bonus Chart on page 4, a senior citizen housing development of at least 35 units meeting the requirements of Section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus. This is a very desirable option for senior housing developments. In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus.

## **HOW THE DENSITY BONUS WORKS FOR STUDENT HOUSING PROJECTS**

New legislation taking effect in 2019 requires cities and counties to grant a 35% density bonus for housing developments that will include at least 20% of the units for low income college students. The housing must be used exclusively for full-time students at accredited colleges, and must be subject to an operating agreement or master lease with one or more colleges. Unlike the maximum income requirements for other forms of affordable housing, resident income levels are determined through the student's eligibility for the state's Cal Grant financial aid program. Affordable rent levels are also specially tailored for a student population, with maximum rents established per bed for individual residents, rather than for the entire apartment unit. Homeless students receive priority for affordable units.

## **HOW THE DENSITY BONUS WORKS FOR COMMERCIAL PROJECTS**

The Density Bonus Law requires that cities and counties provide a "development bonus" to commercial developers who partner with affordable housing developers for the construction of affordable housing on the commercial project site, or offsite within the jurisdiction located near schools, employment and a major transit stop. The commercial developer may participate through the donation of land or funds for the affordable housing, or direct construction of the housing units. The partnership between the commercial developer and the affordable developer can occur through a newly formed legal entity such as a corporation, LLC or partnership, or can take the shape of a contractual agreement between the parties. To be eligible for the development bonus, at least 30% of the housing units must be restricted to lower income residents or 15% of the housing units must be restricted to very low income residents. Unlike the primary Density Bonus Law, there is no fixed amount of increased density awarded to the developer. Instead, the development bonus can be any mutually agreeable incentive, including up to a 20% increase in development intensity, floor area ratio, or height limits, up to a 20% reduction in parking requirements, use of a limited use elevator, or an exception to a zoning ordinance or land use requirement. Commercial developers who need extra leverage to obtain more favorable development standards for their project may want to consider providing affordable housing in order to take advantage of the benefits of the development bonus.

## **HOW THE DENSITY BONUS WORKS FOR CONDOMINIUM CONVERSION PROJECTS**

The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% for the total units to low or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful.

## HOW THE DENSITY BONUS WORKS FOR CHILD CARE

Housing projects that provide child care are eligible for a separate density bonus equal to the size of the child care facility. The child care facility must remain in operation for at least the length of the affordability covenants. A percentage of the child care spaces must also be made available to low and moderate income families. A separate statute permits cities and counties to grant density bonuses to commercial and industrial projects of at least 50,000 square feet, when the developer sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a child care facility.

## HOW TO OBTAIN A DENSITY BONUS THROUGH LAND DONATION

Many market rate housing developers are uncomfortable with building and marketing affordable units themselves, whether due to their lack of experience with the affordable housing process or because of their desire to concentrate on their core market rate homes. Other developers may have sites that are underutilized in terms of project density. The Density Bonus Law contains a special sliding scale bonus for land donation which allows those developers to turn over the actual development of the affordable units to local agencies or experienced low income developers. The density bonus is available for the donation of at least an acre of fully entitled land, with all needed public facilities and infrastructure, and large enough for the construction of a high density very low income project containing 10% of the total homes in the development. The parcel must be located within the boundary of the proposed development or, subject to the approval of the jurisdiction, within one-fourth mile of the boundary of the proposed development. The more units that can be built on the donated land, the larger the density bonus. Because of the parcel size requirements, this option is only practical for larger developments. The land donation density bonus can be combined with the regular density bonus provided for the development of affordable units, up to a maximum 35% density bonus. A master planned community developer needs to carefully evaluate the land donation option as opposed to engaging an affordable housing developer to fulfill the project's affordable housing obligations. In many cases the master developer will prefer to control the affordable component of the project through a direct agreement with the affordable housing developer, rather than allowing the local government to control the project.

## FLOOR AREA RATIO BONUSES

Under new legislation effective in 2019, a local jurisdiction is permitted to grant a floor area ratio bonus rather than a traditional density bonus to certain high density affordable housing projects adjacent to public transit. Eligible projects are also entitled to special parking ratios of one-tenth of a parking space per affordable unit and one-half space per market rate unit. To be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low income tenants, must be located within a transit priority area or near a major transit stop, and must be in compliance with local height limits.

## How the Density Bonus Can Help in a Friendly Jurisdiction

While the Density Bonus Law is often used by developers to obtain more housing than the local jurisdiction would ordinarily permit, it can also be a helpful land use tool in jurisdictions which favor the proposed project and want to provide support. Planners in many cities and counties may be disposed by personal ideology or local policy to encourage the construction of higher density housing and mixed use developments near transit stops and downtown areas, but are hampered by existing general plan standards and zoning from approving these sorts of projects. Elected officials often support these projects too, but may find it politically difficult to oppose neighborhood and environmental groups over the necessary general plan amendments, zoning changes and CEQA approvals.

The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes. A project that satisfies the requirements of the Density Bonus Law often can obtain the necessary land use approvals through the

award of the density bonus units and requested concessions and incentives, without having to amend the underlying land use requirements. Friendly local officials may encourage the use of the density bonus to “force” the jurisdiction to approve a desired project.

## How the Density Bonus Law Can Help in a Hostile Jurisdiction

It is important to know that the density bonus is a state law requirement which is mandatory on cities and counties, even charter cities which are free from many other state requirements. A developer who meets the law’s requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of the locality’s desires (subject to limited health and safety exceptions). The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer, or other reductions in development standards if needed to achieve the total density permitted by the density bonus.

Developers who nonetheless encounter hostility from local jurisdictions are provided several tools to ensure that a required density bonus is actually granted. Developers are entitled to an informal meeting with a local jurisdiction which fails to modify a requested development standard. If a developer successfully sues the locality to enforce the density bonus requirements, it is entitled to an award of its attorneys’ fees. The obligation to pay a developer’s attorneys’ fees is a powerful incentive for local jurisdictions to voluntarily comply with the state law density bonus requirements, even when the jurisdiction is not in favor of its effects on the project.



## CEQA Issues in Density Bonus Projects

Although there is no specific density bonus exemption from the California Environmental Quality Act, many density bonus projects are likely candidates for urban infill and affordable housing exemptions from CEQA. One commonly invoked exemption is the Class 32 urban infill exemption found in CEQA Guidelines Section 15332. That exemption is available if the project is consistent with applicable general plan designation and zoning, the site is five acres or less and surrounded by urban uses, is not habitat for endangered, rare or threatened species, does not have any significant effects relating to traffic, noise, air quality or water quality, and is adequately served by utilities and public services. Other exemptions are available for high density housing projects near major transit stops (CEQA Guidelines Section 15195) and affordable housing projects of up to 100 units (CEQA Guidelines Section 15194).

A 2011 case, *Wollmer v. City of Berkeley*, clarified the use of the CEQA infill exemption for density bonus projects. In that case, an opponent of a Berkeley density bonus project challenged the City's use of the urban infill exemption on the grounds that the City's modifications and waivers of development standards, as required under the Density Bonus Law, meant that the project was not consistent with existing zoning. The court rejected that argument, finding that the modifications required by the Density Bonus Law did not disqualify the project from claiming the exemption.

Not all density bonus projects will qualify for one of these CEQA exemptions, however. Sometimes the additional density provided to non-exempt projects may bring the project out of the coverage of an existing CEQA approval for a general plan, specific plan or other larger project. For instance, if a previously approved environmental impact report analyzed a 100 unit project as the largest allowed under existing zoning, but the developer is able to qualify for 120 units with a density bonus, the existing EIR may not cover the larger project. The larger density bonus project may require additional CEQA analysis for approval.

## Using the Density Bonus to Satisfy Inclusionary Housing Requirements

Many of California's cities and counties have adopted inclusionary housing ordinances, which typically require that a specified percentage of units in a new housing development be restricted as affordable units. The inclusionary requirements significantly reduce income from rental units and sales prices of for-sale homes. In today's tight housing market, compliance with local inclusionary requirements may make many projects economically infeasible. The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary A 2013 case, *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, held that inclusionary units qualify housing requirements as affordable units for purposes of the Density Bonus Law. The case confirmed that the density bonus is a financial tool available to help developers achieve city and county inclusionary housing requirements.

## Density Bonus and Replacement Housing

Developers obtaining a density bonus are required to replace existing units which were previously occupied by very low or lower income households or subject to rent control, when those units have been demolished or vacated prior to the density bonus application. The housing development must also meet the applicable affordable housing standards, including the replacement units. As a result of uncertainty about how to apply these standards when the income levels of prior residents is unknown. The Density Bonus Law establishes a rebuttable presumption for the income level of the replacement unit when the income level of the actual prior resident is unknown.

## Density Bonus in the Coastal Zone

When affordable housing is proposed in the coastal zone, the Density Bonus Law's focus on encouraging the development of affordable housing could clash with the California Coastal Act's focus on environmental protection. Legislation effective in 2019 now requires the density bonus to be administered in the Coastal

Zone in a manner that is consistent and harmonized with the California Coastal Act. This legislation overturns a 2016 appellate court ruling, *Kalnel Gardens, LLC v. City of Los Angeles*, which found that a proposed housing project that violates the Coastal Act as a result of a density bonus could be denied on that basis. The court in *Kalnel Gardens* held that the Density Bonus Law is subordinate to the Coastal Act, but the new language attempts to strike a balance between the state goals of promoting housing and protecting the coast.

## **Density Bonus – A Flexible Tool**

The Density Bonus Law can be a powerful tool for different types of development projects, whether they are traditional affordable housing projects, predominantly market rate housing developments, or senior projects. Obtaining greater density can help the developer of any project bring costs and financing sources into line by putting more homes on the land, reducing the per unit land costs. Use of the favorable parking requirements can reduce the amount of costly land needed for parking. The incentives and concessions to be provided by the local government can provide a helpful way to modify development requirements which may stand in the way of a successful project. Of course there is a price to pay for these benefits—the affordable units needed to earn the density bonus. Developers need to make a cost-benefit determination whether the cost of compliance is worth the benefits. But the Density Bonus Law is unquestionably a useful option for housing developers trying to make financial sense of projects in today's economy.

## Density Bonus Statutes

### Government Code Sections 65915 – 65918.

#### Effective as of January 1, 2019

**65915.** (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of

development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(ii) Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if requested by the applicant and consistent with the applicable requirements of this section, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development, as defined in Section 4100 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

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

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city or county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students. For purposes of this clause, "lower income students" means students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student under this clause shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education that the student is enrolled in, as described in subclause (I), or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver, from the college or university, the California Student Aid Commission, or the federal government shall be sufficient to satisfy this subclause.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term "unit" as used in this section means one rental bed and its pro rata

share of associated common area facilities. The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), an applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1).

(3) For the purposes of this section, "total units," "total dwelling units," or "total rental beds" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, the continued affordability of all very low and low-income rental units that qualified the applicant for the award of the density bonus for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it 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 local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government'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 local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, "replace" shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be

rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall

be subject to paragraph (2).

(ii) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in subparagraph (A) is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(D) For purposes of this paragraph, "equivalent size" means that the replacement units contain at least the same total number of bedrooms as the units being replaced.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), 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 subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, 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-income and moderate-income households.

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

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons

and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the

plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, county, or city and county, or, if elected by the applicant, a lesser percentage of density increase, including, but not limited to, no increase in density. The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

PERCENTAGE LOW-INCOME UNITS	PERCENTAGE DENSITY BONUS
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

PERCENTAGE VERY LOW-INCOME UNITS	PERCENTAGE DENSITY BONUS
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

PERCENTAGE MODERATE-INCOME UNITS	PERCENTAGE DENSITY BONUS
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20

26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

26	31
27	32
28	33
29	34
30	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

PERCENTAGE VERY LOW-INCOME	PERCENTAGE DENSITY BONUS
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on

the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) 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.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means

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 schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) (1) The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval. For purposes of this subdivision, "study" does not include reasonable documentation to establish eligibility for the concession or incentive or to demonstrate that the incentive or concession meets the definition set forth in subdivision (k). This provision is declaratory of existing law.

(2) Except as provided in subdivisions (d) and (e), the granting of a density bonus shall not require or be interpreted to require the waiver of a local ordinance or provisions of a local ordinance unrelated to development standards.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in 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 as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results 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 subdivision (c).

(2) 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.

(3) 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 subdivision (c).

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "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.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land

use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. 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.

(p) (1) Except as provided in paragraphs (2) and (3) upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of low-income or very low income units provided for in paragraphs (1) and (2) of subdivision (f) and is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, a development shall have unobstructed access to a major transit stop if a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager's unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) If the development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code, the ratio shall not exceed 0.5 spaces

per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(C) If the development is a special needs housing development, as defined in Section 51312 of the Health and Safety Code, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) 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. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(5) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(6) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(7) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(8) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in

fractional units shall be separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

#### **65915.5.**

(a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal

to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

(g) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the condominium project is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households, unless the proposed condominium project replaces those units, as defined in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, and either of the following applies:

(1) The proposed condominium project, inclusive of the units replaced pursuant to subparagraph (B) of paragraph (3) of subdivision (c) of Section 65915, contains affordable units at the percentages set forth in subdivision (a).

(2) Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

(h) Subdivision (g) does not apply to an applicant seeking a density bonus for a proposed housing development if their application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

#### **65915.7.**

(a) When an applicant for approval of a commercial development has entered into an agreement for partnered housing described in subdivision (c) to contribute affordable housing through a joint project or two separate projects encompassing affordable housing, the city, county, or city and county shall grant to the commercial developer a development bonus as prescribed in subdivision (b). Housing shall be constructed on the site of the commercial development or on a site that is all of the following:

(1) Within the boundaries of the local government.

(2) In close proximity to public amenities including schools and employment centers.

(3) Located within one-half mile of a major transit stop,

as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(b) The development bonus granted to the commercial developer shall mean incentives, mutually agreed upon by the developer and the jurisdiction, that may include, but are not limited to, any of the following:

(1) Up to a 20-percent increase in maximum allowable intensity in the General Plan.

(2) Up to a 20-percent increase in maximum allowable floor area ratio.

(3) Up to a 20-percent increase in maximum height requirements.

(4) Up to a 20-percent reduction in minimum parking requirements.

(5) Use of a limited-use/limited-application elevator for upper floor accessibility.

(6) An exception to a zoning ordinance or other land use regulation.

(c) For the purposes of this section, the agreement for partnered housing shall be between the commercial developer and the housing developer, shall identify how the commercial developer will contribute affordable housing, and shall be approved by the city, county, or city and county.

(d) For the purposes of this section, affordable housing may be contributed by the commercial developer in one of the following manners:

(1) The commercial developer may directly build the units.

(2) The commercial developer may donate a portion of the site or property elsewhere to the affordable housing developer for use as a site for affordable housing.

(3) The commercial developer may make a cash payment to the affordable housing developer that shall be used towards the costs of constructing the affordable housing project.

(e) For the purposes of this section, subparagraph (A) of paragraph (3) of subdivision (c) of Section 65915 shall apply.

(f) Nothing in this section shall preclude any additional allowances or incentives offered to developers by local governments pursuant to law or regulation.

(g) If the developer of the affordable units does not commence with construction of those units in accordance with timelines ascribed by the agreement

described in subdivision (c), the local government may withhold certificates of occupancy for the commercial development under construction until the developer has completed construction of the affordable units.

(h) In order to qualify for a development bonus under this section, a commercial developer shall partner with a housing developer that provides at least 30 percent of the total units for low-income households or at least 15 percent of the total units for very low-income households.

(i) Nothing in this section shall preclude an affordable housing developer from seeking a density bonus, concessions or incentives, waivers or reductions of development standards, or parking ratios under Section 65915.

(j) A development bonus pursuant to this section shall not include a reduction or waiver of the requirements within an ordinance that requires the payment of a fee by a commercial developer for the promotion or provision of affordable housing.

(k) A city or county shall submit to the Department of Housing and Community Development, as part of the annual report required by Section 65400, information describing a commercial development bonus approved pursuant to this section, including the terms of the agreements between the commercial developer and the affordable housing developer, and the developers and the local jurisdiction, and the number of affordable units constructed as part of the agreements.

(l) For purposes of this section, "partner" shall mean formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial development applicant and the affordable housing developer are each partners, members, shareholders or other participants, or a contract or agreement between a commercial development applicant and affordable housing developer for the development of both the commercial and the affordable housing properties.

(m) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

#### **65916.**

Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

#### **65917.**

In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

#### **65917.2.**

(a) As used in this section, the following terms shall have the following meanings:

(1) "Eligible housing development" means a development that satisfies all of the following criteria:

(A) The development is a multifamily housing development that contains five or more residential units, exclusive of any other floor area ratio bonus or incentive or concession awarded pursuant to this chapter.

(B) The development is located within one of the following:

(i) An urban infill site that is within a transit priority area.

(ii) One-half mile of a major transit stop.

(C) The site of the development is zoned to allow residential use or mixed-use with a minimum planned density of at least 20 dwelling units per acre and does not include any land zoned for low density residential use or for exclusive nonresidential use.

(D) The applicant and the development satisfy the replacement requirements specified in subdivision (c) of Section 65915.

(E) The development includes at least 20 percent of the units, excluding any additional units allowed under a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter, with an affordable housing cost or affordable rent to, and occupied by, persons with a household income equal to or less than 50 percent of the area median income, as determined pursuant to Section 50093 of the Health and Safety Code, and subject to an affordability restriction for a minimum of 55 years.

(F) The development complies with the height requirements applicable to the underlying zone. A development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pur-

suant to this chapter to relieve the development from a maximum height limitation.

(2) "Floor area ratio" means the ratio of gross building area of the eligible housing development, excluding structured parking areas, proposed for the project divided by the net lot area. For purposes of this paragraph, "gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(3) "Floor area ratio bonus" means an allowance for an eligible housing development to utilize a floor area ratio over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city or county, calculated pursuant to paragraph (2) of subdivision (b).

(4) "Major transit stop" has the same meaning as defined in Section 21155 of the Public Resources Code.

(5) "Transit priority area" has the same meaning as defined in Section 21099 of the Public Resources Code.

(b) (1) A city council, including a charter city council or the board of supervisors of a city and county, or county board of supervisors may establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio bonus, calculated as provided in paragraph (2), in lieu of a density bonus awarded on the basis of dwelling units per acre.

(2) In calculating the floor area ratio bonus pursuant to this section, the allowable gross residential floor area in square feet shall be the product of all of the following amounts:

(A) The allowable residential base density in dwelling units per acre.

(B) The site area in square feet, divided by 43,560.

(C) 2,250.

(c) The city council or county board of supervisors shall not impose any parking requirement on an eligible housing development in excess of 0.1 parking spaces per unit that is affordable to persons and families with a household income equal to or less than 120 percent of the area median income and 0.5 parking spaces per unit that is offered at market rate.

(d) A city or county that adopts a floor area ratio bonus ordinance pursuant to this section shall allow an applicant seeking to develop an eligible residential development to calculate impact fees based on square feet, instead of on a per unit basis.

(e) In the case of an eligible housing development that is zoned for mixed-use purposes, any floor area ratio requirement under a zoning ordinance or land use element of the general plan of the city or county applicable to the nonresidential portion of the eligible housing development shall continue to apply notwithstanding the award of a floor area ratio bonus in accordance with this section.

(f) An applicant for a floor area ratio bonus pursuant to this section may also submit to the city, county, or city and county a proposal for specific incentives or concessions pursuant to subdivision (d) of Section 65915.

(g) (1) This section shall not be interpreted to do either of the following:

(A) Supersede or preempt any other section within this chapter.

(B) Prohibit a city, county, or city and county from providing a floor area ratio bonus under terms that are different from those set forth in this section.

(2) The adoption of an ordinance pursuant to this section shall not be interpreted to relieve a city, county, or city and county from complying with Section 65915.

#### **65917.5.**

(a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures. For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable

zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the

project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

#### **65918.**

The provisions of this chapter shall apply to charter cities.