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**SAN LUIS OBISPO COUNTY
LCP AMENDMENT LCP-3-SLO-21-0025-1-PART D
(DENSITY BONUS REGULATIONS)
JULY 8, 2021
EXHIBITS**

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Exhibit 1: Proposed IP Amendment

ORDINANCE NO. 3428

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

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

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

CHAPTER 23.04 – SITE DESIGN STANDARDS

23.04.090 - Affordable Housing Density Bonus

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

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

b. Application Submittal.

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

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

(ii) The proposed development requires a Conditional Use Permit; or

(iii) A Conditional Use Permit is otherwise required by this Title.

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

(i) The development project shall have five or more dwelling units, exclusive of any density bonus units.

(ii) Density Bonus Guide. Any information and supplement documentation listed in the Guide is required unless otherwise noted as optional

(iii) Include citations of the state and county density bonus codes upon which the density bonus, adjusted parking ratios, incentives or concessions, and waivers or reductions of development standards is requested; and explanations and supporting evidence demonstrating how the proposed project satisfies the applicable standards and criteria.

(iv) Include all documentation the applicant would like to rely on to demonstrate support for the requested incentives and concessions, waivers and reductions of development standards. The requests shall conform with the requirements of Section E below (Decisions and Findings).

(v) The application for an incentive, concession, or a waiver or reduction of development standards must also qualify for a density bonus.

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

c. Determination of Eligibility.

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

(i) The amount of density bonus for which the project is eligible.

(ii) The parking ratio for which the project is eligible.

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

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

d. Project Design.

- (1) **Location and Dispersal of Dwelling Units.** Deed-restricted dwelling units shall be dispersed throughout the development and shall not be clustered, unless the Review Authority approves a cluster design for such units.
- (2) **Number of Bedrooms.** The average number of bedrooms of the deed-restricted dwelling units shall equal or exceed the average number of bedrooms of the market-rate dwelling units.
- (3) **Exterior Appearance and Quality of Materials.** The exterior appearance and quality of materials of the deed-restricted dwelling units shall be the same or similar to the market-rate dwelling units.
- (4) **Unit Availability and Project Phasing.** Deed restricted dwelling units shall be completed and available for occupancy prior to or concurrently with market rate dwelling units. If the project is to be developed in phases, then each phase shall contain a share of the total number of deed restricted units that is proportional to the size of each phase.
- (5) **Land Donation.** The timing and provision of land donation(s) shall comply with California Government Code 65915(g).

e. Decision and Findings.

- (1) **Findings for Density Bonus and Adjusted Parking Ratios.** The Review Authority shall approve or approve with conditions a request for density bonus and adjusted parking ratios if it finds that:
 - (i) The proposed project is eligible for the requested density bonus and adjusted parking ratios pursuant to State Density Bonus Law; and
 - (ii) The proposed project is consistent with the applicable standards and criteria found in State Density Bonus Law.
 - (iii) Where a development project may qualify for other density bonuses in addition to those provided by this section (e.g. through Section 23.04.096 – Inclusionary Housing, or Section 23.04.036 – Cluster Division) only one such bonus may be used.

- (2) **Findings for Incentives and Concessions.** The Review Authority shall approve or approve with conditions a request for incentives or concessions, unless it makes any of the following findings based upon substantial evidence:
- (i) The incentive or concession does not result in identifiable and actual cost reductions, consistent with California Government Code Section 65915(k):
 - (1) to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5, or
 - (2) for rents for the targeted units to be set as specified in California Government Code Section 65915(c).
 - (ii) The incentive or concession would have a specific, adverse impact, as defined in California Government Code Section 65589.5(d)(2), upon public health and safety, the physical environment, or on any real property that is listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.
 - (iii) The incentive or concession would be contrary to state or federal law.
- (3) **Findings for Waivers and Reductions of Development Standards.** The Review Authority shall approve or approve with conditions a request for waivers or reductions of development standards, unless it makes any of the following findings:
- (i) The development standard(s) are not preventing the construction of the proposed density bonus project at the densities or with the incentives permitted under this Section.
 - (ii) The waiver or reduction of development standards would have a specific, adverse impact, as defined in California Government Code Section 65589.5(d)(2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
 - (iii) The waiver or reduction of development standards would have an adverse impact on any real property that is listed in the California Register of Historical Resources.
 - (iv) The waiver or reduction of development standards would be contrary to state or federal law.
- (4) **Findings for a Density Bonus Greater than allowed by the State Density Bonus Law.** The Review Authority may, at its own discretion, approve or approve with conditions a request for density bonus greater than the ratio of density bonus units described in State Density Bonus Law, provided that the Review Authority finds that:
- (i) The proposed project provides deed-restricted affordable dwelling units beyond the percentage of units prescribed in State Density Bonus Law.

(ii) The additional density bonus is proportional to the increase in deed-restricted affordable dwelling units provided beyond the minimum percentages listed in State Density Bonus Law.

(iii) The proposed project otherwise meets the applicable standards and criteria.

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

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

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

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

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

1. The proposed amendments to the Land Use Ordinance and Coastal Zone Land Use Ordinance help to implement the provisions of California Government Code Section 65915 (Density Bonuses and Other Incentives) by providing incentives and bonus units

that may result in the inclusion of affordable housing within residential development projects. The proposed amendments do not involve the addition of any new uses in the County that are not already currently allowed. The proposed amendments are intended to ensure compliance with the permitting requirements of the California Government Code Section 65915 – Density Bonuses and Other Incentives. Individual projects using the density bonus ordinance must receive discretionary permit approval and CEQA clearance.

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

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

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

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

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

ATTEST:

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

By: T'Ana Christiansen
Deputy Clerk

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

RITA L. NEAL
County Counsel

By: /s/ Benjamin Dore
Deputy County Counsel

Dated: _____

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO
I, **WADE HORTON**, Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.
Witness, my hand and seal of said Board of Supervisors on December 4, 2020.
WADE HORTON,
Ex-Officio Clerk of the Board of Supervisors
By: *T'Ana Christiansen*
Deputy Clerk

