

**Chapter 17.78
NO NET LOSS PROGRAM**

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17.78.010 Purpose.

The City desires to ensure its compliance with Senate Bill 330 (SB 330) and establish a No Net Loss Program for certain residential projects. This chapter provides that, concurrent with the approval of any change in zone from a residential use to a less intensive residential or non-residential use, the City will transfer the residential units being eliminated into a unit bank, and make density transfer units available to project applicants subsequently seeking to develop property for residential use within the City. In doing so, this will ensure that there is no net loss of residential capacity within the City as required by SB 330.

17.78.020 Definitions.

As used in this chapter, the following terms shall have the following meanings:

“Community Development Director” means the means the Director of the City’s Community Development Department or designee.

“Density transfer” means a density increase of up to those percentages above the otherwise maximum residential density as specified in this chapter.

“Density transfer agreement” means a legally binding agreement between a developer of a housing development and the City containing such terms and conditions as determined by the City Attorney, which ensures that the requirements of this chapter are satisfied.

“Density transfer units” means those residential units granted pursuant to the provisions of this chapter, that exceed the maximum residential density for the development site and that are available in the Unit Bank.

“Housing development” means construction projects consisting of five or more residential units or Lots, including single-family and multi-family, that are proposed to be constructed pursuant to this chapter.

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“Lot” means

1. A lot when shown as a delineated lot of land with a number or other designation on a parcel map or tract map and not to be used for the common benefit of other lots recorded in the Office of the County Recorder of Riverside County and legally created under the Subdivision Map Act; or
2. A lot of land held under separate ownership from adjacent property that constitutes a legal lot under applicable law.

“Maximum Residential Density” means the maximum number of residential units permitted under the zoning ordinance and the City's General Plan Land Use Element, applicable to the subject property at the time an application for the construction of a housing development is deemed complete by the City, excluding the additional units permitted by this chapter. 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.

“Unit Bank” means the number of units available to the No Net Loss Program as a result of a change of zone from a residential use to a less intensive residential use or a non-residential use. The Community Development Director shall have the sole authority to administer and maintain the unit bank balances, and determine credits and availability, which determination shall be final.

17.78.030 Housing Capacity Transfer to Unit Bank

The City may approve a transfer of units to the Unit Bank that meet the following criteria:

- A. The project requesting the transfer of residential capacity to the Unit Bank must be on property that is a minimum of one acre and a maximum of fifty (50) acres.
- B. The ordinance adopted for a zoning amendment or specific plan amendment and the resolution adopted for a general plan amendment changing the zoning and/or land use designation of a parcel or parcels of property to a less intensive residential use or to a non-residential use shall include a determination establishing the residential capacity existing before the amendment(s) and identifying the unused housing capacity that will be transferred to the Unit Bank and made available for a residential density transfer pursuant to this chapter.

17.78.040 Eligibility to Transfer Units from the Unit Bank through Density Transfer

The City may grant a density transfer through the No Net Loss Program to new housing projects that meet the following criteria:

- A. The project is on property that is a minimum of one acre.
- B. The project takes place in one of the following residential zoning districts within the City:
 1. Rural Mountainous Residential (R-M-R)
 2. Rural Residential (R-R)
 3. Estate Single-Family Residential (R-E)

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4. Hillside Single-Family Residential (R-H)
 5. Single-Family Residential (R-1)
 6. Medium Density Residential (R-2)
 7. High Density Residential (R-3)
 8. Residential Mixed-Use (RMU)
 9. Specific Plan (SP) – Residential Designated Areas Only
- C. The project requesting a density transfer from the Unit Bank does not require a Specific Plan Amendment.
- D. In determining the number of density transfer units to be granted pursuant to this chapter, the maximum allowable residential density for the site shall be computed as follows:
1. R-M-R, R-R, R-E, R-H, and R-1 Zoning - the total number of allowed dwelling units shall be calculated by multiplying the maximum residential density for the zoning district by 1.1, for a ten percent density increase.
 2. R-2, R-3, and RMU and SP Zoning - the total number of allowed dwelling units shall be calculated by multiplying the maximum residential density for that zoning district by 1.2, for a 20 percent density increase.
 3. SP Zoning – the total number of allowed dwelling units shall be calculated by multiplying the maximum residential density set forth by the applicable specific plan for the subject property by 1.3 for a 30 percent density increase.
 4. Density transfers in the No Net Loss Program can be combined with the density bonus program established in Chapter 17.58 LEMC or with a program in the City's Housing Element.
 5. In no case shall the number of density transfer units awarded under the No Net Loss Program exceed the number of unallocated units in the unit bank on the date that the housing development application is submitted to the Planning Division.
 6. In no case shall the total number of approved additional units exceed the maximum available under this chapter plus those available pursuant to Chapter 17.58 LEMC.
 7. A maximum of one density transfer pursuant to this chapter shall be approved for any housing development.
- E. A density transfer agreement shall be required for any project seeking a density transfer as part of the No Net Loss Program.

17.78.050 Types of density transfers and incentives allowed.

- A. Density Transfer. The density transfer allowed by this chapter shall consist of those density increases specified in LEMC Section 17.78.030 above the maximum residential density applicable to the site as of the date of the project land use permit application.
- B. The Residential Mixed-Use (RMU) zoning district allows the housing development to include nonresidential uses. Approval of mixed-use activities in conjunction with the No Net Loss program is permissible if authorized elsewhere under the Lake Elsinore Municipal Code and subject to those requirements. A density transfer will be granted only for the residential portion of a mixed use development.

17.78.060 Development Standards.

The development standards applicable to a density transfer housing development shall be those of the underlying zoning district. The granting of a density transfer does not constitute approval of or grounds for modification or waiver of any development standard or other requirement of the Lake Elsinore Municipal Code.

17.78.070 Processing of No Net Loss Program density transfer requests.

A request for a density transfer pursuant to this chapter shall be processed as part of the housing development application. A density transfer request pursuant to this chapter shall be noted on the application. The process for obtaining preliminary approval of the density transfer agreement, shall be as follows:

- A. Filing. An applicant proposing a housing development pursuant to this chapter shall submit an application for a density transfer agreement as part of the submittal of any formal request for approval of a housing development. The application, whether a pre-application or a formal application, shall include:

1. A brief description of the proposed housing development, including the total number of units, and density transfer units proposed;
2. The zoning and general plan designations and assessor's parcel number(s) of the project site;
3. A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveways, and parking layout;
4. If an additional incentive or program available under the Lake Elsinore Municipal Code or the Housing Element is requested, a description of why the additional incentive or program is applicable to the density transfer units; and
5. Any additional information and submittal requirements as noted on the development application.

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B. Review of No Net Loss Program Request.

1. Within 90 days of receipt of the application for request to use the No Net Loss Program, the City shall provide to an applicant a letter, which identifies project issues of concern, and the procedures for compliance with this chapter.
2. If additional incentives are requested under Chapter 17.58 LEMC and/or implementing a program in the City's Housing Element, the Community Development Director shall inform the applicant that the requested additional incentives are or are not available thereunder for the proposed development and provide justification for said determination.

17.78.080 No Net Loss Program density transfer agreement.

A. The terms of the draft density transfer agreement shall be reviewed and revised as appropriate by the Community Development Director and the City Attorney who shall formulate a recommendation to the Planning Commission for review and the City Council for final approval.

B. At a minimum, the density transfer agreement shall include the following:

1. The total number of units proposed within the housing development;
2. A schedule for completion and occupancy of the units;
3. A description of any additional incentive being provided by the City;
4. A description of remedies for breach of the agreement; and
5. Any other provisions to ensure implementation and compliance with this chapter and other density bonus provisions established in Chapter 17.58 LEMC or in the City's housing element, as applicable, including but not limited to:
 - a. A description of the household income group to be accommodated by the housing development, and the standards for determining the corresponding affordable rent or affordable sales price and housing cost
 - b. The location, unit sizes (square feet), and number of bedrooms of targeted units, as that term is defined in the State Density Bonus and Incentive Law (California Government Code Section 65915 et seq.); and
 - c. Tenure of use restrictions for targeted units.

17.78.090 Implementation.

A. The provisions of this chapter shall be administered by the Community Development Department. Project permitting processes are established in Chapter 17.415 LEMC, Permitting Requirements.

B. Projects requesting a density transfer through the No Net Loss Program are subject to processing through both Chapter 17.410 LEMC, General Application Processing Procedures, and the requirements in this chapter.

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C. The Community Development Director shall have the authority to administratively reduce the unit bank balance to offset any increase in the total number of dwelling units allowed within a Specific Plan resulting from adoption of a Specific Plan Amendment.