

6) **Second Reading of an Ordinance Approving Amendments to Title 17 of the Lake Elsinore Municipal Code Related to Density Bonuses and Adding a No Net Loss Program**

Adopt by title only and waive further reading of AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, APPROVING AMENDMENTS TO TITLE 17 OF THE LAKE ELSINORE MUNICIPAL CODE RELATED TO DENSITY BONUSES AND ADDING A NO NET LOSS PROGRAM.



REPORT TO CITY COUNCIL

To: Honorable Mayor and Members of the City Council

From: Jason Simpson, City Manager

Prepared by: Candice Alvarez, MMC, City Clerk

Date: October 24, 2023

Subject: Second Reading of an Ordinance Approving Amendments to Title 17 of the Lake Elsinore Municipal Code Related to Density Bonuses and Adding a No Net Loss Program

Recommendation

Adopt by title only and waive further reading of AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, APPROVING AMENDMENTS TO TITLE 17 OF THE LAKE ELSINORE MUNICIPAL CODE RELATED TO DENSITY BONUSES AND ADDING A NO NET LOSS PROGRAM.

Background/Discussion

At its Regular meeting on October 10, 2023, the City Council introduced by title only and waived further reading of the Ordinance.

Attachments

Attachment 1 – Ordinance
Exhibit A – Chapter 17.58 Density Bonuses
Exhibit B – Chapter 17.78 No Net Loss Program

ORDINANCE NO. 2023-1487

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, APPROVING AMENDMENTS TO TITLE 17 OF THE LAKE ELSINORE MUNICIPAL CODE RELATED TO DENSITY BONUSES AND ADDING A NO NET LOSS PROGRAM

Whereas, Chapter 17.58 of the Lake Elsinore Municipal Code (LEMC), which sets forth the zoning ordinance's procedures for providing density bonuses for housing developments in accordance with the State Density Bonus Law (Government Code Section 65915 et. seq.), was enacted in 1979;

Whereas, amendments to the State Density Bonus Law from years prior to 2020, and the enactment of Assembly Bill 2345 (AB 2345) in 2020, changed the City's obligations regarding granting density bonuses and concessions or incentives;

Whereas, Program 6 of the City of Lake Elsinore Housing Element requires the update of the City's density bonus ordinance to remain in compliance with Government Code §65915 or the update the City's zoning regulations to cross-reference the most recent State laws governing density bonus provision;

Whereas, the Housing Crisis Act of 2019 (Senate Bill 330) became effective January 1, 2020 and restricts the City's ability to change the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use, without concurrently changing the development standards, policies, and conditions applicable to other parcels within the City to ensure that there is no net loss in residential capacity;

Whereas, the proposed Chapter 17.78 will establish a No Net Loss Program that creates a process whereby 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 ensure that there is no net loss of residential capacity within the City as required by SB 330 through the creation of a unit bank that will allow housing capacity to be transferred to other residential developments;

Whereas, pursuant to LEMC Section 17.415.040 (Zoning Amendments) the Planning Commission (Commission) has been delegated with the responsibility of making recommendations to the City Council (Council) regarding zoning ordinance text amendments;

Whereas, on September 19, 2023, at a duly noticed Public Hearing the Commission considered evidence presented by the Community Development Department and other interested parties with respect to this item, and adopted a resolution recommending that the Council approve the amendments to Title 17 of the LEMC; and

Whereas, on October 10, 2023 at a duly noticed Public Hearing, the Council has considered the recommendation of the Commission as well as evidence presented by the Community Development Department and other interested parties with respect to this item.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES HEREBY RESOLVE, AND DETERMINE AS FOLLOWS:

Section 1: The foregoing recitals are true and correct and are hereby incorporated into these findings by this reference.

Section 2: The Council has reviewed and analyzed the proposed amendments to Title 17 of the LEMC, pursuant to the California Planning and Zoning Laws (Cal. Gov. Code Sec 65000 et. seq.), Lake Elsinore General Plan (GP), and the LEMC and finds that the proposed amendments are consistent with the requirements of California Planning and Zoning Law and with the goals and policies of the GP and the LEMC.

Section 3: In accordance with Government Code Section 65855, the Council makes the following findings regarding the amendments to Title 17 of the Lake Elsinore Municipal Code:

1. The proposed municipal code amendments will not be: a) detrimental to the health, safety, comfort or general welfare of the persons residing or working within the City, or b) injurious to the property or improvements within the City.

The proposed amendments of Title 17 (Zoning) of the Municipal Code have been analyzed relative to their potential to have detrimental effects and it has been determined that the amendments have no impact upon the public's health, safety, comfort, and general welfare because the proposed municipal code amendments establish regulations that bring the Zoning Ordinance into compliance with State law.

2. The proposed municipal code amendments are consistent with the Goals, Policies, and Implementation Programs of the General Plan and the development standards established with the LEMC.

The proposed amendments of Title 17 (Zoning) of the Municipal Code do not create new zoning districts, remove existing zoning districts or rezone property. The proposed municipal code amendments will not interfere with the implementation of the goals, policies, and implementation programs of the General Plan and specifically implement Program 6 of the Housing Element.

Section 4: The Council hereby finds and determines that the proposed amendments to the LEMC are exempt from the California Environmental Quality Act (Cal. Publ. Res. Code §§21000 et seq. "CEQA") and the State CEQA Guidelines (14. Cal. Code Regs §§15000 et seq.), specifically pursuant to Sections 15060(c)(2), 15060(c)(3), and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because there is no possibility that it may have a significant effect on the environment, and because it is not a "project" as that term is defined in Section 15378 of the State CEQA Guidelines.

Section 5: Based upon the evidence presented, both written and testimonial, and the above findings, the Council hereby approves the amendments of Title 17 of the Lake Elsinore Municipal Code attached hereto as Exhibit "A" and Exhibit "B".

Section 6: Severability. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

Section 7: Effective Date. This Ordinance shall become effective at 12:01 a.m. on the thirty-first (31st) day after the date of adoption.

Section 8: Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause a synopsis of the same to be published according to law.

Passed, Approved, and Adopted at a regular meeting of the City Council of the City of Lake Elsinore, California, on this 24th day of October 2023.

Natasha Johnson
Mayor

Attest:

Candice Alvarez, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Ordinance No. 2023-1487 was introduced by the City Council of the City of Lake Elsinore, California, at its Regular meeting of October 10, 2023 and adopted at its Regular meeting of October 24, 2023 and that the same was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Candice Alvarez, MMC
City Clerk

**Chapter 17.58
DENSITY BONUSES**

Sections:

17.58.010	Purpose.
17.58.020	Definitions.
17.58.030	Density Bonus and Incentive Law
17.58.040	Processing of density bonus request.
17.58.050	Density bonus agreement.
17.58.060	Implementation.

17.58.010 Purpose.

The purpose of this chapter is to implement Government Code Section 65915 et seq. (the “State Density Bonus and Incentive Law”). Any changes to the State Density Bonus and Incentive Law shall be deemed to supersede and govern any conflicting provisions contained herein

17.58.020 Definitions

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

“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 or, if elected by the applicant, a lesser percentage of density increase. All density calculations resulting in fractional units shall be rounded up to the next whole number.

“Density bonus agreement” means a legally binding agreement between a developer and the City to ensure that the requirements of this chapter are satisfied. The agreement shall establish, among other things, the number of restricted units, their size, location, terms and conditions of affordability, and production schedule.

“Housing development,” as used in this chapter, means a development project for five or more residential units, including mixed-use developments. For the purposes of this chapter, “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. For purposes of this chapter “housing development” includes a shared housing building development.

“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

Exhibit A

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.

“Senior citizen housing development” means a development project as defined in Sections 51.3 and 51.12 of the California 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. For purposes of this chapter “development” includes a shared housing building development.

“Shared housing building” means a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas that are designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. Such a “shared housing building” may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

“Shared housing unit” means one or more habitable rooms, not within another dwelling unit, which includes a bathroom, sink, refrigerator, and microwave, and is used for permanent residence.

17.58.030 Density Bonus and Incentive Law.

A. For a housing development qualifying pursuant to the requirements of Government Code Section 65915, the City shall grant a density bonus in an amount specified by Government Code Section 65915. Except as otherwise required by Government Code Section 65915, the density bonus units shall not be included when calculating the total number of housing units that qualifies the housing development for a density bonus. Except as otherwise required by Government Code Section 65915, the maximum allowable density shall not exceed a 35 percent density bonus.

B. The City shall grant the applicant the number of incentives and concessions required by Government Code Section 65915. The City shall grant the specific concession(s) or incentive(s) requested by the applicant, unless it makes any of the relevant written findings stated in Government Code Section 65915(d). Senior citizen housing developments that qualify for a density bonus shall not receive any incentives or concessions, unless Government Code Section 65915 is amended to specifically require that local agencies grant incentives or concessions for senior citizen housing developments.

C. For any development project that is granted a density bonus or other benefit pursuant to this section, the affordable units that qualify the project as eligible for a density bonus, must be constructed concurrently with or prior to the construction of any market rate units. In addition, the affordable units must be integrated with the market rate units so that there is a mix of affordable and market rate units, if any, in each building of the development project.

E. An applicant shall not receive a density bonus or any other incentive or concession if the housing development would be excluded under Government Code Section 65915.

17.58.040 Processing of density bonus request.

A. In addition to any other review required for a proposed housing development, an application for a density bonus shall be filed with the Planning Division. The application shall be filed concurrently with an application for a development plan review or administrative approval. At the time the applications are submitted, the applicant shall pay all required processing fees.

B. The applicant shall submit reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.

C. Except as restricted by Government Code Section 65915, the applicant for a density bonus may submit a proposal for the waiver or reduction of any development standards that have the effect of physically precluding the construction of a housing development incorporating the density bonus and any incentives or concessions granted to the applicant. A request for a waiver or reduction of development standards shall be accompanied by documentation demonstrating that the waiver or reduction is physically necessary to construct the housing development with the additional density allowed pursuant to the density bonus and incorporating any incentives or concessions required to be granted. The City shall approve a waiver or reduction of a development standard, unless it finds that:

1. The application of the development standard does not have the effect of physically precluding the construction of a housing development at the density allowed by the density bonus and with the incentives or concessions granted to the applicant;
2. The waiver or reduction of the development standard 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;
3. The waiver or reduction of the development standard would have an adverse impact on any real property that is listed in the California Register of Historical Resources; or
4. The waiver or reduction of the development standard would be contrary to state or federal law.

D. The applicant may request, and the City shall grant, a reduction in parking requirements in accordance with Government Code Section 65915(p), as that section may be amended from time to time.

E. The applicant shall comply with all requirements stated in Government Code Section 65915.

17.58.50 Density bonus agreement.

A. The applicant shall enter into an agreement with the City to ensure the continued affordability of all affordable units or the continued reservation of such units for qualifying senior citizens. The density bonus agreement between the project applicant and the City shall be made a condition of the discretionary planning permits for all housing developments seeking a density bonus pursuant to this chapter.

Exhibit A

B. The terms of the draft density bonus 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.

C. The Community Development Director is authorized to execute the density bonus agreement on behalf of the City. The executed density bonus agreement shall be recorded on the parcel or parcels designated for the construction of qualifying units, or donated for the purpose of constructing qualifying units. The approval and recordation shall occur prior to final map approval or, where a map is not being processed, prior to the issuance of building permits for the parcels or units. The density bonus agreement shall be binding upon all future owners and successors in interest.

17.58.060 Implementation.

A. The application for a density bonus shall be processed in the same manner as, and concurrently with the application for a development plan review. Project permitting processes are established in Chapter 17.415 LEMC, Permitting Requirements.

B. The provisions of this chapter shall be administered by the Community Development Department. Projects requesting density bonus are subject to processing through both Chapter 17.410 LEMC, General Application Processing Procedures, and the requirements in this chapter.

**Chapter 17.78
NO NET LOSS PROGRAM**

Sections:

17.78.010	Purpose.
17.78.020	Definitions.
17.78.030	Housing Capacity Transfer to Unit Bank
17.78.040	Eligibility.
17.78.050	Types of density transfers and incentives allowed.
17.78.060	Development Standards.
17.78.070	Processing of No Net Loss Program density transfer requests.
17.78.080	No Net Loss Program density transfer agreement.
17.78.090	Implementation.

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.

Exhibit B

“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)

Exhibit B

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.

Exhibit B

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.

Exhibit B

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.