



ORDINANCE NO. ORD19-__

**AN ORDINANCE OF THE MONO COUNTY BOARD OF SUPERVISORS
AMENDING CHAPTER 15.40 OF THE MONO COUNTY CODE ENACTING UPDATED
HOUSING MITIGATION REQUIREMENTS**

WHEREAS, the Board of Supervisors finds that the County of Mono has a shortage of housing that is affordable to many residents who work and reside in Mono County; and

WHEREAS, requiring developers of land to mitigate the impact of development projects on the availability of workforce and affordable housing and address the housing shortage, either directly or through the payment of fees, is reasonable and necessary to offset the impact of the development which has resulted in a decrease of land available for workforce housing and for persons with low and moderate levels of income, a demonstrative increase in the price of housing and an increase in the need for workers within the county; and

WHEREAS, the applied mitigation requirements will not result in a negative impact on the overall development of housing or impose a barrier that will prevent persons with lower and moderate levels of income from renting or purchasing housing; and

WHEREAS, the proposed exemptions will limit barriers to providing housing to the workforce; and

WHEREAS, This Ordinance, including Exhibit A hereto, has been reviewed for compliance with the California Environmental Quality Act (CEQA), and the CEQA guidelines, and the County's environmental procedures, and has been found to be exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines, because the Board of Supervisors hereby finds with certainty that there is no possibility the passage of this Ordinance amending the Housing Mitigation Ordinance will have a significant effect on the environment; and furthermore, that no associated funds will be expended on any specific development project prior to the completion of any required environmental review for such specified development (see Section 15378(b)(4) of the CEQA Guidelines).

NOW, THEREFORE, BE IT ORDAINED that the Mono County Board of Supervisors hereby finds as follows:

SECTION ONE: That Chapter 15.40 of the Mono County Code entitled “Housing Mitigation Requirements” is amended in its entirety to read as set forth in Exhibit A attached hereto and incorporated herein by this reference.

SECTION TWO: This ordinance shall become effective 60 days from the date of its adoption and final passage. The Clerk of the Board of Supervisors shall post this ordinance and also publish the ordinance in the manner prescribed by Government Code section 25124 no later than 15 days after the date of this ordinance’s adoption and final passage. If the Clerk fails to publish this ordinance within said 15-day period, then the ordinance shall not take effect until 60 days after the date of publication.

APPROVED AND ADOPTED this 10th day of December 2019, by the following vote:

AYES :

NOES :

ABSENT :

ABSTAIN :

John Peters, Chair

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board

County Counsel

Exhibit A

Mono County Code Chapter 15.40 Housing Mitigation Requirements

Sections:

15.40.010	Purpose/Findings
15.40.020	Definitions
15.40.030	Housing Fund
15.40.040	Fees and Requirements for Non-Residential and Residential Development Projects
15.40.050	Developer Incentives
15.40.060	Exemptions
15.40.070	Alternatives and Procedure
15.40.080	Occupancy and Availability of Affordable Units
15.40.090	Serial or Sequential Development Prohibited
15.40.100	Enforcement
15.40.110	Annual Review
15.40.120	Appeal, Waiver and Adjustment
15.40.130	Severability

15.40.010 Purpose/Findings

The County of Mono (“County”) has a shortage of housing that is affordable to many citizens who work and reside in Mono County. The cost of housing has risen sharply over the past several years due to the cost of housing in the County’s resort communities, the increase in second-home residences throughout the County, the growth of the vacation rental industry, the scarce and limited amount of private land within the County available for residential development, and the overall increase in the cost of housing throughout the State of California. Wages for workers residing in Mono County have not kept pace with the increase in housing costs. As a result, employees in the lower, moderate, and even upper-moderate income ranges cannot afford to reside in proximity to work centers, have been forced to move greater distances from their places of employment, or have moved from the area entirely. This has decreased the pool of workers necessary to meet the needs of businesses and communities within Mono County. It has also increased commuting time to places of employment and contributes to substandard living conditions for workers and their families that earn low and moderate incomes.

Requiring developers of land to mitigate the impact of development projects on the availability of workforce and affordable housing and contribute to addressing the housing shortage in Mono County, either directly or through the payment of fees, dedication of land, or similar means, is reasonable and necessary to offset the impact of the development and address identified housing shortages, which has resulted in a decrease of land available for workforce housing and for persons earning low and moderate incomes, a demonstrative increase in the price of housing, and an increase in the need for workers within the County. Expecting new employers to contribute to the creation and preservation of affordable housing is likewise reasonable. Despite the availability of State and County incentives, there has been little or no market development of residential housing affordable to households earning very low, low, moderate, and even upper-moderate income levels and no other reasonable means to meet this need for workforce and affordable housing are available.

A requirement that new development mitigate these impacts and shortages through the provision of affordable housing units, the payment of fees, or similar means, is reasonable and necessary to improve the health, safety and general welfare of the citizens of Mono County. These requirements will not result in a negative impact on the overall development of housing or impose a barrier that will prevent persons with lower and moderate levels of income from purchasing housing.

15.40.020 Definitions

For the purposes of this Chapter the following definitions shall apply:

- A. **Accessory Dwelling Unit (ADU)** means residential occupancy of a Dwelling Unit located on the same parcel as the main residential unit. An ADU provides complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the main residential unit is situated. An ADU shall meet the minimum regulations for an efficiency dwelling unit in the California Building Code. An ADU shall meet the requirements of Chapter 16 of the Mono County General Plan Land Use Element; in the event of conflict between state law and Chapter 16, state law supersedes.
- B. **Affordable Unit** means a Dwelling Unit which is required to be built, sold, and/or restricted pursuant to the requirements under this Chapter.
- C. **Area Median Income (AMI)** means the median income, adjusted for family size, applicable to Mono County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision), as determined periodically by HUD and updated on an annual basis.
- D. **Deed Restrictions** are private agreements that restrict the use of the real estate in some way and are listed in the deed. The restrictions travel with the deed, and generally cannot be removed by new owners.
- E. **Developer** means a person or entity who applies for a permit or other approval for the construction, placement, or creation of residential or non-residential development, including the subdivision of land.
- F. **(Residential) Dwelling Unit** means any structure or portion thereof designed or used as a residence or sleeping quarters of a household, including a caretaker unit.
- G. **Full-Time Equivalent Employee (FTEE)** means a full-time employee or combination of part-time employees whose work constitutes a total of 2,080 hours of annual employment generated by residential and non-residential development. In general, a full-time employee employed for an entire year equals one FTEE, a full-time employee employed on a seasonal basis equals one-half FTEE, and a part-time employee employed on an annual basis equals one-half FTEE. When an “employee generation calculation” results in seasonal or part-time employees, those employees shall be combined to form FTEEs.
- H. **Household** means one or more individuals who occupy one Dwelling Unit, whether related by blood or marriage.
- I. **Housing Fund** means the Mono County Affordable Housing Fund established pursuant to this Chapter.
- J. **Housing Mitigation Fee** means any fee established pursuant to this Chapter.
- K. **HUD** means the United States Department of Housing and Urban Development.
- L. **Housing Mitigation Agreement** means an agreement between the County of Mono and a Developer governing how the Developer shall comply with this Chapter.
- M. **Inclusionary Unit** means an Affordable Unit required by this Chapter to satisfy a development project’s housing mitigation requirement(s).
- N. **Market-Rate Unit** means a Dwelling Unit in a Residential Development Project that is not an Affordable Unit.
- O. **Multi-Family Residential Development Project** means a project consisting of two or more Dwelling Units within a single building and may include multiple buildings on a site or parcel. Typical examples include apartments, condominiums and townhomes.

- P. **Non-Residential Development Project** means a project for the construction, addition, subdivision of land, or placement of a structure which is for a non-residential use and which is proposed to be developed within the following General Plan land use designations: commercial, commercial lodging, service commercial, industrial park, industrial, rural resort, including that portion of any development within a mixed use or combined use designation (e.g. specific plan) which includes the construction, addition, or placement of a structure for non-residential use.
- Q. **Primary Residence** means the main home where one voluntarily establishes oneself and family, not merely for a special or limited purpose, but with a present intention of making it one's true, fixed, permanent home and principal establishment. A principal residence may be declared through voter registration, tax return, or other legal documents.
- R. **Residential Development Project** means a project for the construction or placement of any Residential Dwelling Unit in a permanent location, or the subdivision of land which is planned, designed, or used for the development of residential Dwelling Units within the following General Plan land use designations: rural residential, estate residential, Single-Family Residential, Multi-Family Residential, or any other area where residential Dwelling Units may be developed.
- S. **Single-Family Residential Property or Unit** means a property which serves the primary purpose of providing a permanent Dwelling Unit to a single family.
- T. **Sleeping Area** means any bedroom, loft, or other space that can be equipped with beds, foldout sofas, or other similar sleeping furniture.

15.40.030 Housing Fund

- A. There is hereby established the Mono County Affordable Housing Fund ("Housing Fund"). Any and all fees collected pursuant to this Chapter (and established via resolution), together with any other funds received by grant or otherwise for the purpose of furthering the development and preservation of affordable housing within the County of Mono, shall be deposited into the Housing Fund.
- B. The Housing Fund shall be administered by the Mono County Board of Supervisors, or designee appointed by resolution, to implement housing programs with a focus on those identified as priorities, as well as other programs that meet housing needs through acquisition, rehabilitation, preservation, or subsidy, and subject to the provisions of this Chapter.

15.40.040 Fees and Requirements for Non-Residential and Residential Development Projects

- A. Affordable Housing Mitigation requirements and fees shall be imposed on Developers of Non-Residential Development Projects, Residential Development Projects, and Single-Family Residential Units based on in-lieu fee and/or Inclusionary Unit policies resulting from completed nexus studies that quantify the impacts of development on affordable housing. The policy establishing requirements and fees shall be adopted by resolution of the Board of Supervisors and reviewed on a periodic basis as needed.
- B. For Non-Residential Development Projects, the development of an Affordable Unit is the preferred mitigation alternative. However, if a non-residential Developer can demonstrate that on- or off-site construction is not feasible and/or would not provide housing units that would adequately meet workforce needs, an alternative Housing Mitigation Agreement may be approved pursuant to section 15.40.070 and may include payment into the Housing Fund in-lieu fees (established by resolution pursuant to this Chapter) to satisfy the mitigation obligation.
- C. For Residential Development Projects, the development of a unit on-site (an Inclusionary Unit) is the preferred mitigation alternative. The size, design, and location of Inclusionary Units shall be consistent with the Mono County General Plan, applicable specific plans, and all other applicable county ordinances, regulations, and building standards. The construction of the on-site units shall be located within the same subdivision and within the boundaries of the project, shall be compatible in exterior appearance with the market-rate units being developed in the project, and shall be dispersed throughout the residential development to the extent feasible pursuant to the corresponding Housing Mitigation Agreement (see 15.40.070). The Affordable Units must contain a similar number of bedrooms as

the market-rate units but may be smaller than market-rate units pursuant to the corresponding Housing Mitigation Agreement. The interior amenities within the Affordable Unit may differ from the interior amenities in a market-rate unit, and may be required to include EPA II wood stoves, energy efficient amenities, and other cost-efficient amenities as provided for in the corresponding Housing Mitigation Agreement (see 15.40.070). The on-site units must be built at the same time as market-rate units and a certificate of occupancy will not be issued to any market-rate unit until any Affordable Unit is completed and issued a certificate of occupancy.

- D. Compliance with this section may be accomplished by the Developer alone or in combination with others, including without limitation, the Mono County Housing Authority or a nonprofit housing corporation.

15.40.050 Developer Incentives

- A. A Developer may apply for incentives from the County to assist in meeting the requirements of this Chapter. The granting of any incentive(s) by the County to a Developer is discretionary and nothing in this Chapter shall be construed to establish, directly or through implication, a right of a Developer to receive any assistance or incentive from the County. In granting incentives, the County may require the Developer to demonstrate exceptional circumstances that necessitate assistance from the County, as well as provide documentation showing how such incentives will increase the feasibility of providing affordable housing. The following incentives will be considered by the County:
- i. Density Bonus. A density bonus incentive pursuant to the California Density Bonus Law (found in California Government Code Sections 65915 – 65918 and as may be amended or replaced from time to time) will be provided for any project that meets the statutory criteria. The County may consider an additional density bonus upon request by the Developer when such request can be accommodated within the parameters of the Mono County General Plan or any applicable specific plan or County ordinance.
 - ii. Fee Waiver or Deferral. The payment of County fees required under this Chapter may be deferred until the certificate of occupancy is issued. Further, a Developer may apply for a fee reduction or waiver when the Developer proposes to substantially exceed the requirements of this Chapter. A Developer of a Residential Development Project who builds Affordable Units in amounts that exceed the requirements of this Chapter may apply for a waiver of assessments for any applicable County maintained road maintenance and snow removal services that would otherwise be required.
 - iii. Reduced Site Development Standards. A Developer may propose, and the County may consider, a reduction in site development standards including a reduction in setback, lot coverage, and square footage requirements; a reduction in parking requirements; a modification of the requirement that all utility lines must be placed underground; and reduction of open space requirements. To be eligible for such reduced development standards, the Developer must provide substantial evidence that the reductions are necessary to allow the Developer to meet or exceed the requirements of this Chapter, that the reduced requirements will meet all applicable health, safety, snow storage and drainage requirements, and will further the purpose of this Chapter.

15.40.060 Exemptions

The following list of projects are exempt from the provisions of this Chapter. Modification(s) made to any previously exempted project which renders the project ineligible for the exemption shall automatically trigger the application of the requirements and payment of the fees in place at the time the modifications are made. Similarly, if an exempted project falls out of compliance with the conditions of the exemption, the County shall initiate any appropriate enforcement action, including but not limited to, enforcing payment of the fees and compliance with the requirements in place at the time of the enforcement action.

- A. Residential development for agriculture workers, including cannabis cultivators, e.g., farm labor housing.
- B. Mobile Home Park development.

- C. Any building that is replaced or repaired as a result of fire or other catastrophic damage or loss so long as the square footage is not increased by more than 500 square feet.
- D. Any project that is being developed as an affordable housing project as defined by state law and deed restricted as such.
- E. Any project that is being developed to meet other community housing needs, such as transitional housing or homeless shelters, and is deed restricted as such or governed by some other regulatory agreement ensuring the use.
- F. A Multi-Family Residential Development project consisting of the development of fewer than thirty units (30) in duplexes, triplexes or other forms of Multi-Family Residential Development Projects not developed as a condominium or planned development project where, with the exception of one owner-occupied or on-site manager unit, all units will be leased as long-term rental units and where short-term rentals, as defined in the Mono County General Plan and Mono County Code, will be prohibited. To qualify for this exemption, the project's planning permit must contain conditions to prevent the conversion to condominiums and prohibit short-term rentals and a deed restriction must be recorded against the property to inform future owners of the restrictions. If a planning permit is necessary to document the conditions in this exemption, a Director Review (DR) permit shall be processed and the permit fee shall be waived. If a planning permit is necessary for any reason other than, or in addition to, those strictly pertaining to this exemption, no fee waiver shall be granted, the applicant shall be subject to all applicable permit processes and fees, and the provisions of this exemption shall be included in the permit conditions along with all other applicable conditions.
- G. A Multi-Family Residential Development project consisting of the development of fewer than thirty (30) units in duplexes, triplexes or other forms of Multi-Family Residential Development Projects where units are owned as Primary Residences and where short-term rentals are prohibited. The project's planning permit must contain conditions requiring the units to be Primary Residences and prohibiting short-term rentals, and a deed restriction must be recorded against the property to inform future owners of the restrictions. If a planning permit is necessary to document the conditions in this exemption, a Director Review (DR) permit shall be processed and the permit fee shall be waived. If a planning permit is necessary for any reason other than, or in addition to, those strictly pertaining to this exemption, no fee waiver shall be granted, the applicant shall be subject to all applicable permit processes and fees, and the provisions of this exemption shall be included in the permit conditions along with all other applicable conditions.
- H. Single-Family Residential (SFR) Units less than 2,000 square feet in size.
- I. Single-Family Residential (SFR) Units prohibiting short-term rentals. If a planning permit is necessary to document the condition in this exemption, a Director Review (DR) permit shall be processed and the permit fee shall be waived. If a planning permit is necessary for any reason other than, or in addition to, those strictly pertaining to this exemption, including pursuant to Chapter 16 of the Mono County General Plan, no fee waiver shall be granted, the applicant shall be subject to all applicable permit processes and fees, and the provisions of this exemption shall be included in the permit conditions along with all other applicable conditions.
- J. Single-Family Residential (SFR) Units where the unit is a Primary Residence and the owner (or approved tenant pursuant to section 15.40.080(b)(4)) qualifies as moderate- or below-income according to HUD affordable housing guidelines.
- K. Single-Family Residential (SFR) Units that deed restrict future sales to moderate- or below-income levels.
- L. Single-Family Residential (SFR) Units within a subdivision that previously met the requirements of this Chapter during the planning process.
- M. Accessory Dwelling Units (ADUs) meeting the requirements of state law and General Plan Land Use Element Chapter 16.

15.40.070 Alternatives & Procedure

- A. The County will consider and may approve alternative mitigation proposals through a Housing Mitigation Agreement in circumstances where it can be demonstrated by the Developer that the alternative proposal meets the purpose of this Chapter and provides a greater housing benefit to the community than would otherwise be attained through the building of Affordable Dwelling Units or the payment of in lieu fees in accordance with this Chapter. Developers may submit an alternative plan with the designated processing fee to the Community Development Department. Initial approval of such an alternative proposal as a Housing Mitigation Agreement will be made by the Community Development Department and thereafter approved by the Planning Commission and will be subject to final review and approval by the Board of Supervisors. Alternatives that will be considered include, but are not limited to, land dedication, off-site housing, conversion of existing housing, and payment of in lieu fees.
- B. Housing Mitigation Agreement. In the case of alternative proposals, the Developer, the holder of any deed of trust or other lien holder on the property, and the Community Development Director or his or her designee shall execute a Housing Mitigation Agreement prior to the recordation of the parcel map or subdivision map in the case of subdivisions, or prior to approval of a Director Review or Use permit, or prior to the issuance of building permits in the case of all other development. The Developer's entry into the Housing Mitigation Agreement shall be a condition of approval for any tentative parcel or final map, Director Review or Use permit, or building permit. The executed Housing Mitigation Agreement shall be recorded with the County Clerk/Recorder at the time of the recording of any final or parcel map or at the time of the issuance of any building permit. The Housing Mitigation Agreement shall include, but not be limited to, the following:
- i. A complete description of the development project;
 - ii. The specific method of compliance with the requirements of this Chapter;
 - iii. Any such matters as may be determined appropriate by the Developer and/or the County.

15.40.080 Occupancy and Availability of Affordable Units

- a. The occupancy and continuing availability of Inclusionary Units as required by the resolution establishing fees and requirements shall be provided for in the following manner:
- b. For Sale Affordable Inclusionary Units. Inclusionary Units designated for sale shall be subject to the following conditions and restrictions:
 - i. Eligible Participants. Affordable Units shall only be available for purchase by residents intending to use the unit as a Primary Residence and who qualify as moderate- or below-income according to HUD affordable housing guidelines.
 - ii. Restrictions on Use and Resale. The Affordable Units shall be subject to deed restrictions memorializing and preserving the required provisions herein and to the conditions of any planning permits approved for the project and property.
 - iii. Sales Price and Transfer. The maximum purchase price shall be set by the applicable HUD affordable housing guidelines for moderate- and below-income housing.
 - iv. Restriction on Use of Unit. The Affordable Unit must be occupied by the owner of the unit as their Primary Residence and may not be leased or rented without a written determination by the Community Development Director or designee; or, if the unit is administered by the Mono County Housing Authority, by that entity, that the proposed tenant qualifies as moderate- or below-income and that rents charged conform to applicable HUD affordable housing guidelines for the tenant's income level. In units where short-term rentals are prohibited, no rentals for 30 days or less may occur under any circumstances.

- v. Term of Restrictions. The restrictions set forth in this section shall remain in effect in perpetuity. If a circumstance arises in the future where these restrictions are removed or not followed, the fees and requirements of this Chapter in place at the time shall be applied.
- vi. Covenants, Conditions, and Restrictions. Any Covenants, Conditions, and Restrictions (CC&Rs) associated with or required for approval of any subdivision subject to this Chapter shall include all of the requirements of this Chapter and shall be recorded with the County Clerk/Recorder. Additional conditions that may be required include provisions that the owner of an Affordable Unit must pay all property taxes in a timely manner, may not refinance the unit without the express written approval of the Community Development Director and, in the case where a deed of trust is made subordinate to the CC&Rs, that the owner must maintain the property in good condition, and comply with all local land use requirements. In addition to any other enforcement remedies, the CC&Rs shall designate and authorize the County to enforce any County-imposed conditions at the County's sole discretion.

15.40.090 Serial or Sequential Development Prohibited

Developers may not avoid the requirements of this Chapter by developing projects in a serial or sequential manner. Development of any property owned by a Developer or his or her successor in interest that is contiguous to any other development subject to this Chapter shall be deemed to be one single project for the purposes of this Chapter when the subsequent development occurs within ten (10) years of any prior development and when the combined development becomes subject to the requirements of this Chapter.

15.40.100 Enforcement.

A. The Community Development Department/Mono County Housing Authority shall be responsible for monitoring and enforcing the provisions of this Chapter. Any violation of this Chapter may be enforced in any manner permissible by law including, but not limited to, pursuant to Section 1.04.060 and Chapter 1.12 of the Mono County Code.

B. Owners and occupants of property subject to the restrictions and requirements of this Chapter shall permit County employees to inspect the property upon two business days advance written notice. Owners of property subject to the restrictions pursuant to this Chapter shall retain all records related to compliance with the obligations and restrictions of this Chapter, the Housing Mitigation Agreement and/or the CC&Rs for a period not less than five years, and shall make such records available to County employees for inspection and copying upon five business days advance written notice.

15.40.110 Annual Review

The provisions of this Chapter, the Affordable Housing Guidelines, and any resolutions adopted to further the purposes of this Chapter shall be reviewed annually by the Mono County Board of Supervisors, Mono County Housing Authority and the Community Development Director or his or her designee. An annual report and accounting shall be provided to the Board of Supervisors by the Community Development Department evaluating the policies set forth in this Chapter and their effects.

15.40.120 Appeal, Waiver, and Adjustment

A Developer of any project subject to the requirements of this Chapter may appeal to the Board of Supervisors for a reduction, waiver, or adjustment of any of the provisions or requirements contained in this Chapter. Any such appeal shall be based upon the misapplication or misinterpretation of this Chapter as applied to the project or violation of law. The Board of Supervisors, in its sole discretion, may adjust or waive any provision or requirement imposed by this Chapter based on good cause shown by substantial evidence in the record.

Any appeal must be in writing and filed with the County Clerk/Recorder and served on the Community Development Director not later than ten (10) days before the first public hearing on any discretionary approval or permit for the development, or if no discretionary permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The

Board of Supervisors shall consider the appeal within sixty (60) days after the filing of the appeal. The appellant shall bear the burden of producing substantial evidence to support the appeal, which shall include providing comparable technical information to support appellant's position. The decision of the Board of Supervisors shall be final.

15.40.130 Severability

The provisions of this Chapter are intended to be severable, and in the event any provision or requirement provided for under this Chapter is determined to be invalid or unenforceable, the remainder of the Chapter shall remain in effect.