

ERRATA

Agenda Item No. V.A

Proposed amendments to the “Achievable” deed restriction category definition, including changes to Sections 52.3.4 and 90.2, and an amendment to Section 34.3.3 regarding driveways for accessory dwelling units

Includes a change to clarify that TRPA can impose up to the maximum penalty allowed in the Bi-State Compact for violations of deed-restrictions, and a change to clarify required qualifying criteria at time of purchase. Changes that differ from the staff report posted on April 6, 2023 are shown in blue underlined text and blue strike-out in Attachments A and C.

TAHOE REGIONAL PLANNING AGENCY

ORDINANCE 2023-___

AN ORDINANCE AMENDING AND ORDINANCE 87-9, AS AMENDED, TO
AMEND TRPA'S CODE OF ORDINANCES AND OTHER MATTERS RELATED
THERE TO

The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.0 **Findings**

- 1.10 The Tahoe Regional Planning Compact (P. L. 96-551, 94 Stat. 3233, 1980) created the Tahoe Regional Planning Agency (TRPA) and empowered it to set forth environmental threshold carrying capacities ("threshold standards") for the Tahoe Region.
- 1.15 The Compact directs TRPA to adopt and enforce a Regional Plan that, as implemented through agency ordinances, rules and regulations, will achieve and maintain such threshold standards while providing opportunities for orderly growth and development consistent with such thresholds.
- 1.20 The Compact further requires that the Regional Plan attain and maintain federal, state, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable.
- 1.25 Compact Art. V(c) states that the TRPA Governing Board and Advisory Planning Commission shall continuously review and maintain the Regional Plan.
- 1.30 In June 1987, the TRPA Governing Board adopted Ordinance 87-9, which established the Regional Plan and included, amongst other things, the Goals & Policies and the Code of Ordinances ("Code").
- 1.35 Concurrent with this Ordinance, the TRPA Governing Board will approve Ordinance 2023-___, An Ordinance to modify the "achievable" deed restriction category definition to require a local employment component, including changes to Sections 52.3.4 and 90.2; and to allow a second driveway for accessory dwelling units, including changes to Section 34.3.3.
- 1.40 TRPA has made the necessary findings required by Article V of the Compact, Chapter 4 of the Code, and all other applicable rules and regulations, and incorporates these findings fully herein.

1.55 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.0 **Amendment of the TRPA Code of Ordinances**

2.10 Ordinance 87-9, as previously amended, is hereby amended as shown in Exhibit 1

Section 3.0 **Interpretation and Severability**

3.10 The provisions of this ordinance adopted hereby shall be liberally construed to affect their purpose. If any section, clause, provision, or portion thereof is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. For this purpose, the provisions of this ordinance are hereby declared respectively severable.

Section 4.0 **Effective Date**

4.10 This ordinance shall be effective 60 days after adoption.

PASSED AND ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held _____ by the following vote:

Ayes:

Nays:

Abstain:

Absent:

Cindy Gustafson, Chair
Tahoe Regional Planning Agency
Governing Board

Exhibit 1 – “Achievable” Code Amendments and Minor Code Amendments – draft code changes

Item #1 - Clarification of the Achievable Housing Definition and updates to the Deed-Restriction Compliance Program

Code of Ordinances

52.3.4. Affordable, Moderate, and Achievable ~~Income~~ Housing

All projects receiving a residential bonus unit for affordable, moderate, or achievable housing development as defined in Chapter 90: *Definitions* shall comply with criteria in Section 52.3.4.A-F. TRPA shall report to the TRPA Governing Board biennially on the implementation of the residential bonus unit program for affordable, moderate, and achievable housing development. This report shall include, but is not limited to, the number of housing developments and units awarded and constructed bonus units, number of bonus units awarded to and constructed in each income category, number of bonus units awarded to and constructed in single and multi-family housing developments, location of housing developments, and compliance with the program.

- A. Residential bonus units may be awarded to single or multi-family housing developments.
- B. The owner of the parcel, through a deed restriction running with the land, shall restrict the unit for which the bonus unit was awarded from being used as a second home or a vacation rental.
- C. A bonus unit may be used for an accessory dwelling unit as defined by Section 21.3.2, notwithstanding 52.3.4.A above, provided it is consistent with all provisions of the applicable area plan or this Code of Ordinances.
- D. The owner of the parcel, through a deed restriction running with the land, shall limit the unit for which the bonus unit was awarded to the approved use and restrict the occupants' household ~~income~~ to affordable, moderate, or achievable ~~housing~~ limits set forth in Chapter 90: *Definitions*, depending on the applicable ~~income level~~ deed-restriction type for which the bonus unit was awarded. The restriction shall also include the requirement to disclose the restrictions associated with the unit at the time of sale of the unit, the requirement to submit an annual compliance report to TRPA, and the potential to be fined up to 1/10 of the current cost of a residential unit of use annually for failure to submit the compliance report, and the potential to be fined a civil penalty of up to \$5,000 per day for failure to comply with the terms of the deed-restriction on each day for which the violation persists ~~or comply with these requirements~~.
- E. An owner-occupant of a unit who has provided all required annual compliance reports and who has had an increase in income so that they are no longer eligible for the bonus unit may apply to TRPA and receive an exemption to the income requirement until the unit is sold. The owner must continue to be the occupant, provide annual compliance reports to remain eligible for the exemption and not be subject to the annual fine, rent the unit only to a ~~n income~~ qualified renter if no longer the occupant, or sell the unit only to a ~~n income~~ qualified buyer as defined in Section 90.2 of the Code of Ordinances.

F. A renter household which has had an increase in income or change in circumstances such that they no longer meet the qualifying criteria may remain in the home for up to one year, after which time the household is required to re-locate if qualifying factors have not been re-established.

FG. The project awarded a residential bonus unit shall be within ½ mile of a designated Town Center; within ½ mile of an existing transit stop or a transit stop that will be existing concurrent with the completion of the project; or located in an area where multi-family dwellings are an allowed or special use.

90.2. OTHER TERMS DEFINED

Achievable Housing

Single or multi-family residential development to be used exclusively as a residential dwelling by permanent residents who meet one or more of the following criteria:

1. Have a household with an income not in excess of 120 percent of the respective county's area median income (AMI) (moderate income households and below); or

2. At least one occupant of the household works at least 30 hours per week or full-time equivalency for an employer with a business license or tax address within the Tahoe region or Tahoe-Truckee Unified School District. Full-time equivalency may be confirmed by employer; or n household achievable area median income (AMI) percentage, using the following methodology:

1. Determine the county's median income where the housing development will be located using income limits for a family of three published annually by the US Department of Housing and Urban Development and, if applicable, the California Department of Housing and Community Development.

2. Determine the county's median single or multi-family housing price, as applicable, where the housing development will be located using median housing prices published annually by the TRPA.

3. Divide the median single or multi-family housing price, as applicable, (determine in Step 2) by 3.79 (buying power) to determine the annual income needed to afford an achievable housing unit.

4. Divide the annual income needed (calculated in Step 3) by the median income (determined in Step 1) to determine the achievable AMI percentage.

3. Is a retired person who has lived in a deed-restricted unit in the Tahoe Basin for more than seven years.

The employment requirement may be waived for accessory dwelling units when the unit is occupied by a family member related by birth, marriage or adoption to the owner of the primary dwelling. TRPA may include asset limits for purchasers of deed-restricted homes.

Example:

- Median Single Family or Multi-family Home Price (Step 1) / 3.79 = Annual Income Needed

Annual Income Needed (Step 3) / HUD County AMI (Step 2) = Achievable AMI Percentage

- El Dorado Median Multi-family home price of \$330,000 / 3.79 = \$87,071 Annual Income Needed

87,071 Annual Income Needed / \$65,500 HUD El Dorado AMI = 127% maximum AMI per household to be eligible for an achievable residential bonus unit

~~This calculation may be periodically adjusted to reflect changes in the affordability gap between median income and median home price within the Lake Tahoe Basin. Maximum AMI per county per household to be eligible for an achievable bonus unit will be available upon request from TRPA. Achievable housing units shall meet the criteria and restrictions in accordance with Chapter 52: *Bonus Unit Incentive Program*.~~

Achievable deed-restrictions issued before [the date this code amendment goes into effect] may utilize this definition or the definition of “achievable” in effect from December 20, 2018 to [the date this code amendment goes into effect].

Item #2 – Number of Driveways for ADUs

34.3.3. Numbers of Driveways

Projects generating up to 1,300 vehicle miles travelled shall be served by a single driveway with no more than two points of ingress/egress from the public right-of-way or other access road, except as provided for in subparagraph A, below. Additional or transferred development that generates more than 1,300 vehicle miles travelled shall conform to the ingress/egress provisions necessary to mitigate all transportation and air quality impacts under subsection 65.2.4.

A. One accessory dwelling unit may be served by a separate driveway only when doing so would result in less environmental disturbance than a single driveway (e.g. sensitive land disturbance, land coverage, tree removal, grading, etc.).

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Tahoe Regional Planning Agency
Attn:
P.O. Box 5310
Stateline, NV 89449

TRPA File No. _____

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ACHIEVABLE AREA MEDIAN INCOME HOUSING ("DEED RESTRICTION")
RECITALS**

A. Declarants are the owners of that certain real property located at _____, _____ County, State of _____, commonly known as Assessor's Parcel No. _____, and more particularly described in the attached Exhibit A (the "Property").

The Grant Deed conveying the Property to Declarant was recorded on _____, as Document No. _____, in the _____ County Recorder's Office.

B. The Property is located in the Tahoe Region as described in the Tahoe Regional Planning Compact (P.L. 96-551, State. 3233, 1980), which region is subject to the regional plan and the ordinances adopted by the Tahoe Regional Planning Agency ("TRPA") pursuant to the Tahoe Regional Planning Compact.

C. Declarants received approval from TRPA on _____ (TRPA File No. _____), to _____ (on that certain real property formerly known as Assessor's Parcel No. _____), subject to a special condition that _____ of the _____ residential units be deed restricted as Achievable ~~Area Median Income~~ housing units.

D. For purposes of this deed restriction Achievable ~~Area Median Income~~ Housing is defined as:

Single or multi-family residential development to be used exclusively as a residential dwelling by permanent residents who meet one or more of the following criteria:

1. Have a household with an income not in excess of 120 percent of the respective county's area median income (AMI) (moderate income households and below) and, if purchasing the home, whose household assets do not exceed two times the annual household income for the respective AMI category and household size; the county's area median income will be determined according to the income limits published annually by the Department of Housing and Urban Development; or

2. At least one occupant of the household works at least 30 hours per week or full-time equivalency for an employer with a business license or tax address within the Tahoe

AGENDA ITEM NO. V.A.

region or Tahoe-Truckee Unified School District. Full-time equivalency may be confirmed by employer; or

3. Is a retired person who has lived in a deed-restricted unit in the Tahoe Basin for more than seven years.

E. Occupancy, Rental and Sale. Such housing shall be occupied, rented and sold to households that meet one or more of the criteria in D., above, and shall be rented and sold at prices affordable to households who meet one or more of the criteria in D., above with the following exceptions:

1. For home purchasers, a qualifying buyer may be actively engaged in seeking employment that meets these requirements, with the understanding that all other provisions of this deed-restriction can and will be enforced after purchase.
2. For purchases of multi-family apartment buildings with rental units, the buyer does not need to meet the criteria in D. in order to purchase the property.
3. The employment requirement in D. for occupants with incomes over 120 percent of AMI may be waived for accessory dwelling units when the unit is occupied by a family member.

EF. Household Assets. Household Assets include the sum of all real and personal property, money, and other items of value owned or controlled by all persons in the household at the time of initial purchase of a unit, including stocks, bonds, precious metals, rare collectibles and bank accounts, but not including clothing, furniture and household appliances. Certain other assets are exempt, including retirement accounts, health savings and college savings accounts.

FG. Primary Residence. Primary Residence shall mean the occupation and use of a residence as the primary residence, which shall be determined by TRPA taking into account the following circumstances:

- i. Voter Registration.
- ii. Stated address on Nevada or California Driver's License or Identification Card;
- iii. Stated address on motor vehicle registration;
- iv. Stated residence for income and tax purposes;
- v. Such other circumstances as well as such processes for verification and investigation deemed appropriate by TRPA in determining the applicant is continuously occupying and using the residence as a primary residence; and
- vi. Primary residence status may be maintained if circumstances that are unforeseen or beyond the control of the resident arise that requires the household to temporarily leave the residence for a period not to exceed six (6) months with the intent to return, and the residence is leased to another household that meets the "achievable housing" qualifications.

achievable area median income (AMI) percentage, using the following methodology:

~~1. Determine the county's median income where the housing development will be located using income limits for a family of three published annually by the US Department of Housing and Urban Development and, if applicable, the California Department of Housing and Community Development.~~

~~2. Determine the county's median single or multi-family housing price, as applicable, where the housing development will be located using median housing prices published annually by the TRPA.~~

~~3. Divide the median single or multi-family housing price, as applicable, (determine in Step 2) by 3.79 (buying power) to determine the annual income needed to afford an achievable housing unit.~~

~~4. Divide the annual income needed (calculated in Step 3) by the median income (determined in Step 1) to determine the achievable AMI percentage.~~

~~**Please note that the AMI percentages will be rounded to increments of 5%, so the percentages generated using the above methodology may differ slightly from those reported TRPA documentation.~~

DECLARATION

1. Declarants hereby declare that, for the purpose of partially satisfying TRPA's (DATE) _____ conditions of approval, the (#) _____ residential unit(s) on the Property shall be permanently restricted to Achievable ~~Area Median Income~~ Housing and shall not be used as a second home or a vacation rental.
2. The restrictions associated with the Property shall be disclosed to the buyer at the time of sale of the Property, through a Real Estate Disclosure form, a copy of which shall also be filed with the Tahoe Regional Planning Agency.
3. The owner of the Property shall submit an annual compliance report to TRPA. Failure to submit the required report, or failure to comply with the requirements of this deed-restriction may result in an annual fine of up to 1/10 of the current cost of a residential unit of use. TRPA may conduct an audit at any time requesting additional documentation to verify the responses submitted in the compliance report. Failure to comply with the requirements of this deed-restriction may result in a civil penalty of up to \$5,000 per day for each day for which the violation persists.
4. It shall not be deemed a violation of Section 3 above if:
 - i. The head of household or individual relied upon for qualification becomes

disabled and is no longer able to work as determined by TRPA in its sole discretion; or

ii. The head of household or individual relied upon for qualification has lost full-time employment and is actively seeking reemployment in the Tahoe region or Tahoe-Truckee Unified School District as determined by TRPA in its sole discretion; or

iii. The Property is unoccupied, and the owner of the property is actively seeking to sell or lease the Property to a qualifying household as determined by TRPA in its sole discretion.

4. An owner-occupant of a Property who has provided all required annual compliance reports and who has had an increase in income so that they no longer meet the income eligibility requirements for Achievable Housing may apply to TRPA and receive an exemption to the income requirement until the unit is sold. To receive the exemption, the owner must either continue to be the occupant and provide annual compliance reports to remain eligible for the exemption and not be subject to the annual fine; or rent the unit only to an income qualified renter if no longer the occupant. When the unit is sold it may only be sold to an income qualified buyer.

5. A renter household which has had an increase in income or change in circumstances such that they no longer meet the qualifying criteria may remain in the home for up to one year, after which time the household is required to re-locate if qualifying factors have not been re-established.

56. This Deed Restriction shall be deemed a covenant running with the land or an equitable servitude, as the case may be, and shall be binding on the Declarants and Declarants' assigns, and all persons acquiring or owning any interests in the Property.

76. The owner of the parcel shall restrict the unit for which the bonus unit was awarded from being used as a second home or a vacation rental.

87. This Deed Restriction may not be revoked or modified without the prior express written and recorded consent of the Tahoe Regional Planning Agency or its successor agency, if any. TRPA is deemed and agreed to be a third-party beneficiary of this Deed Restriction, and as such, can enforce the provisions of this Deed Restriction.

IN WITNESS WHEREOF, Declarants have executed this Deed Restriction this the day and year written below.

Declarant's Signature:

_____ Dated: _____
Name, Title
Ownership Entity

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF)
) SS.
COUNTY OF)

On _____ before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Name: _____
(typed or printed)

APPROVED AS TO FORM:

Tahoe Regional Planning Agency

Dated: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF NEVADA)
) SS.
COUNTY OF DOUGLAS)

On _____ before me, _____ a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

Name: _____
(typed or printed)



TAHOE REGIONAL PLANNING AGENCY
 AFFORDABLE, MODERATE, OR ACHIEVABLE DEED-RESTRICTION
 COMPLIANCE FORM

Per Chapter 52, Bonus Unit Incentive Program of the Tahoe Regional Planning Agency Code of Ordinances, property owners in the Tahoe Region have the option to deed-restrict their parcel to different affordability levels in exchange for a bonus unit. On these parcels, through a deed restriction running with the land, occupants' household income or employment location is restricted to affordable, moderate, or achievable housing limits set forth in Chapter 90, depending on the applicable ~~income level~~ deed-restriction type for which the bonus unit was awarded, and the unit may not be used as a second home or a vacation rental. Deed-restrictions issued per Chapter 52 also include the requirement to disclose the restrictions associated with the unit at the time of sale of the unit, and the **requirement to submit an annual compliance report to TRPA.**

This form must be submitted by April 15 each year following the year in which the home was purchased.

- This form can be digitally signed and submitted electronically by clicking below
- or
- Print, sign and submit via: EMAIL to info@trpa.org, FAX to 775-588-4527, MAIL to PO Box 5310, Stateline NV 89449 or **IN PERSON** at the TRPA front counter located at 128 Market Street, Stateline

Property owners may be subject to a fine of up to 1/10 of the current cost of a residential unit of use (RUU) annually for failure to submit the compliance report, deed-restriction disclosure form, or otherwise comply with the requirements of Chapter 52.

Property Information:

Check one:

Single-Family Residence/Main House Single-Family Residence/Accessory Dwelling Unit (secondary residence). For Single-Family residences, if both the main house and the accessory dwelling unit(s) are deed-restricted, one compliance form may be submitted for all units.

Multi-Family Residence. For Multi-Family Residences, one compliance form may be submitted for multiple units on one parcel.

Physical Address: _____

City: _____ State: _____ County: _____ Zip: _____

Assessor's Parcel Number (APN): _____

1. Deed-restriction affordability level:

Affordable, number of units: ____ Moderate, number of units: ____ Achievable, number of units: ____

2. Units by number of bedrooms:

The deed-restriction covers these units:

Number of studio units: ____ Number of 2-br units: ____ Number of 4-br units: ____

Number of 1-br units: ____ Number of 3-br units: ____ Number of units with 5 or more bedrooms: ____

Total number of units: ____

3. The unit was occupied by the owner throughout the last year: Yes No

3a. If yes, the owner meets the income, employment and/or rent limits established by the deed-restriction, ~~and-as~~ noted in #1, above.

Yes No

4. The unit or units was/were rented: Yes No.

4a. If yes, the renter(s) meet(s) the income, employment and/or rent limits established by the deed-restriction, ~~and-as~~ noted in #1, above.

Yes No

5. ~~The-Has the~~ unit ~~HAS NOT~~ been used as a second home or vacation rental throughout the course of the last year?:

Yes No

6. The unit has been used exclusively by a permanent resident or seasonal worker throughout the course of the last year:

Yes No

If you are not able to answer yes to either of 3a. or 4a. above, please contact TRPA.

DECLARATION: I hereby declare under penalty of perjury that all information submitted as part of this compliance form is true and accurate to the best of my knowledge and I understand that should any information submitted be inaccurate, erroneous, or incomplete, TRPA may take appropriate action.

Deed Holder(s)/Property Owner(s):

AGENDA ITEM NO. V.A.

Printed Name(s) _____ Date: _____
Signature(s): _____