

TAHOE REGIONAL PLANNING AGENCY
ORDINANCE 2019 - 06

AN AMENDMENT TO ORDINANCE NO. 87-9, AS AMENDED, TO AMEND CHAPTER 50 OF THE TRPA CODE OF ORDINANCES TO ADD SHORT-TERM RENTAL NEIGHBORHOOD COMPATIBILITY AS A THIRD CRITERION TO THE PERFORMANCE REVIEW SYSTEM FOR THE DISTRIBUTION OF RESIDENTIAL ALLOCATIONS OTHER MATTERS PROPERLY RELATED THERETO

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

Section 1.00 Findings

- 1.10 It is desirable to amend TRPA Ordinance No. 87-9 by amending the TRPA Code of Ordinances to further implement the Regional Plan pursuant to Article VI (a) and other applicable provisions of the Tahoe Regional Planning Compact.
- 1.20 The TRPA Code of Ordinances amendments were the subject of an Initial Environmental Checklist (IEC), which was processed in accordance with Chapter 3: *Environmental Documentation* of the TRPA Code of Ordinances and Article VI of the Rules of Procedure. The TRPA Code of Ordinances amendments have been determined not to have a significant effect on the environment and are therefore exempt from the requirement of an Environmental Impact Statement (EIS) pursuant to Article VII of the Compact.
- 1.30 The Advisory Planning Commission (APC) and the Governing Board have each conducted a noticed public hearing on the proposed TRPA Code of Ordinances amendment. The APC has recommended Governing Board adoption of the necessary findings and adopting ordinance. At these hearings, oral testimony and documentary evidence were received and considered.
- 1.40 The Governing Board finds that the TRPA Code of Ordinances amendments adopted hereby will continue to implement the Regional Plan, as amended, in a manner that achieves and maintains the adopted environmental threshold carrying capacities as required by Article V(c) of the Compact.
- 1.50 Prior to the adoption of this ordinance, the Governing Board made the findings required by Section 4.5 of the TRPA Code of Ordinances, and Article V(g) of the Compact.
- 1.60 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.00 TRPA Code of Ordinances Amendments

Ordinance 87-9, as amended, is hereby amended by amending the TRPA Code of Ordinances, as set forth in Exhibit 1.

Section 3.00 Interpretation and Severability

The provisions of this ordinance amending the TRPA Code of Ordinances adopted hereby shall be liberally construed to affect their purposes. If any section, clause, provision or portion thereof is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and the amendments to the Regional Plan Package shall not be affected thereby. For this purpose, the provisions of this ordinance and the amendments to the Regional Plan Package are hereby declared respectively severable.

Section 4.00 Effective Date

The provisions of this ordinance amending the TRPA Code of Ordinances shall become effective on December 22, 2019

PASSED AND ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held on October 23, 2019, by the following vote:

Ayes: Ms. Aldean, Ms. Berkgigler, Mr. Bruce, Mr. Cashman, Mrs. Cegavske, Ms. Faustinos, Ms. Laine, Ms. Novasel, Ms. Davidson for Mr. Rice, Ms. Gustafson for Mr. Sevison, Mr. Shute, Mr. Yeates

Absent: Mr. Beyer, Mr. Lawrence



William Yeates, Chair
Tahoe Regional Planning Agency
Governing Board

50.1. ALLOCATION OF ADDITIONAL RESIDENTIAL UNITS

TRPA shall allocate the development of additional residential units as follows:

50.1.1. Requirement of Residential Allocation

No person shall construct a residential project or commence a residential use that creates one or more additional residential units without first receiving an allocation approved by TRPA and awarded by the appropriate jurisdiction. This requirement does not apply to affordable, moderate, or achievable housing units approved after January 1, 1986, but shall apply to conversions of such affordable, moderate, or achievable housing to market-priced status. In order to construct the project or commence the use for which the allocation or the exemption has been approved, the recipient of the allocation or exemption shall comply with all other applicable provisions of this Code.

A. Applicable Residential Uses

The following residential uses referred to in Chapter 21: *Permissible Uses*, contain residential units: secondary residences; employee housing; mobile home dwellings; multi-family dwellings; multi-person dwellings; nursing and personal care facilities; residential care facilities; single-family dwellings; and summer homes.

B. Definition of "Additional Residential Unit"

"Residential unit" is defined in Chapter 90: *Definitions*. For purposes of this chapter, a residential unit is considered "additional" if it is to be created pursuant to a TRPA approval issued on or after January 1, 1986.

The following are not "additional" residential units:

1. The reconstruction or replacement, on the same parcel, of a residential unit legally existing on or approved before January 1, 1986;
2. The reconstruction or replacement, on the same parcel, of a residential unit that was allocated and approved pursuant to this Code;
3. Legally established additions and accessory uses to an existing residential structure that do not create additional residential dwelling units;
4. The relocation of an existing residential unit legally established on January 1, 1986, other than a mobile home dwelling, through a transfer approved by TRPA;
5. The relocation of a legally established mobile home dwelling with existing water, sewer, and electrical services to a mobile home development or to a multi-family dwelling of five units or more, pursuant to a transfer approved by TRPA;
6. An existing, legally established mobile home pad with water, sewer, electrical services, and vehicular parking, whether or not a mobile home is located on the pad; or

7. One or more new residential units permitted by TRPA prior to February 24, 2010, provided that;
 - a. Application is made to TRPA prior to the expiration of the permit, as determined in subsection 2.2.4, to reissue a permit for a project for which an allocation(s) was assigned;
 - b. All permit conditions, fees, securities, building and site design conditions of approval, plan revisions, and other requirements of the original permit are updated to meet the requirements of the Code and all other applicable TRPA ordinances, rules, or regulations at the time of permit reissuance; and
 - c. This subparagraph 7 has not previously been used in relation to the same project.

C. Maximum Number of Residential Units and Distribution of Allocations Among Jurisdictions

1. Annual Release

Up to 120 residential allocations shall be released to local governments in the following proportions:

TABLE 50.5.1-1: MAXIMUM YEARLY ALLOCATIONS		
Jurisdiction	Current % of Allocations	Maximum Allocation
Douglas County	8	10
EL Dorado County	25	30
Placer County	31	37
City of South Lake Tahoe	28	33
Washoe County	8	10
Total	100%	120

2. Additional Bonus Residential Units

In addition to the annual maximum allocations in Table 50.5.1-1, a total of 1,124 (as of December 24, 2018) additional potential residential units of use from the TRPA pool shall be available as bonus units in conjunction with transfer of development rights and/or other TRPA incentive programs designed to attain the goals and objectives of the Regional Plan. Potential residential units of use shall be subject to the foregoing allocation limitations.

3. Reassignment of Allocations

Local jurisdictions may assign allocations to other local jurisdictions. All reassignments must be reported to TRPA before they become effective.

4. Water and Sewage Capacity Limitations

- a. Allocations shall not be distributed to a local jurisdiction if TRPA determines, based on reliable facts, that the jurisdiction lacks sufficient

water or sewer capacity to serve new residential development. If the jurisdiction demonstrates to TRPA's reasonable satisfaction that there is sufficient capacity, the TRPA shall distribute the affected allocations to the jurisdiction.

- b. In the event a lack of water and sewage capacity results in an imbalance of allocations to a jurisdiction, a program to recognize the imbalance shall be developed if capacity becomes available.

D. Residential Allocation Incentive Pool

Beginning on January 1, 2015, 20 residential allocations shall be placed in the residential allocation incentive pool. Thereafter, for every four-year allocation release pursuant to subsection 50.4.2, 40 allocations shall be placed in the residential allocation incentive pool. At the beginning of each year, unused allocations from the previous year shall be assigned to the residential allocation incentive pool administered by TRPA. However, beginning January 1, 2009, local jurisdictions may elect to retain those allocations earned through the annual performance review process, and assigned pursuant to subparagraph 4 below, and unused by December 31 of the year distributed.

1. TRPA may assign allocations from the residential allocation incentive pool to parcels throughout the region provided the recipient retires a sensitive parcel within the region.
2. TRPA may assign up to, but not exceeding, 200 allocations from the residential allocation incentive pool to parcels throughout the region provided the local jurisdiction maintains a Certified Local Government Moderate Income Housing Program as described in subsection 52.3.6.
3. TRPA may assign allocations from the residential allocation incentive pool for Residential Development Right Transfers to Centers as described in subparagraph 51.5.1.C.3 when a transfer earns a bonus unit or portion thereof.
4. In addition to allocations earned through the annual Performance Review System, TRPA may assign allocations to local jurisdictions as follows:
 - a. One allocation for every 10,000 square feet of existing Land Capability Class 1b (SEZ) coverage removed and permanently retired in accordance TRPA Code Section 30.5.3.; and/or
 - b. One allocation for every two new attached residential units constructed within Centers provided the allocation is used within a Center; and/or
 - c. One allocation for each project constructed from the 5-year EIP project list tied to a measurable EIP Performance Measure and not already credited under the TMDL provision in subsection 50.5.2.E.1 below, and/or
 - d. One allocation for improving three of nine of the TLOS criteria from the previous year by five to ten percent as determined by the

jurisdiction-specific TLOS Criteria Matrix in the TLOS Guidelines Handbook. To receive an allocation pursuant to this provision TLOS criteria must be submitted the prior year.

To maintain sufficient allocations for the programs described in subsection 50.5.2.B below, the number of allocations distributed to all local jurisdictions pursuant to this provision in a calendar year shall not exceed 50 percent of the residential allocation incentive pool. Unless otherwise agreed upon by all participating local jurisdictions, in no case shall an individual jurisdiction be assigned more than 25 percent of the pool. If insufficient allocations exist in the residential allocation incentive pool to meet the demand earned by local jurisdictions, the allocations available and earned in accordance with a.-d. above shall be distributed based on the percent distribution set forth in Table 50.5.1-1.

E. Disposition of Unused Allocations

When the final conditions of a residential permit issued by TRPA are not met and that permit expires, the residential allocation associated with the permit is transferred to the TRPA pool or the local jurisdictional pool from where the allocation was distributed, and no residential unit of use is created.

50.1.2. Distribution and Administration of Residential Allocations

Residential allocations shall be distributed and administered in accordance with the Goals and Policies, this Code, and the Rules of Procedure.

A. Reserved Allocations

Distribution of allocations shall be by a method or system that permits the participation of parcels with scores below the numerical level defining the top rank in the applicable jurisdiction.

1. TRPA shall reserve ten percent of each jurisdiction's annual allocations for distribution to parcels below the Individual Parcel Evaluation System (IPES) line. The reserved allocations shall be distributed by a method of random selection by TRPA. A county or city may elect to distribute the reserved allocations, or may be exempt from the set-aside requirement, provided TRPA finds the substitute system or the city/county distribution system, as applicable, provides an equal or superior opportunity for participation of parcels below the IPES line.
2. Allocations distributed by TRPA under this subsection may either be transferred or returned to TRPA for reissuance to the jurisdiction of origin. Unclaimed reserved allocations after June 1 of the year awarded shall be given to the appropriate jurisdiction for issuance.
3. Failure to submit a complete application for a transfer by June 1 of the year in which the allocation was distributed shall result in the forfeiture of the allocation to the jurisdiction of origin.

B. Distribution of the Residential Allocation Incentive Pool

TRPA shall distribute allocations from the allocation pool as follows:

1. Owners of eligible parcels may apply to TRPA on a first-come, first-served basis for available allocations in the allocation pool.
2. Owners of parcels located within jurisdictions that maintain a Certified Local Government Moderate Income Housing Program as described in subsection 52.3.6, may apply to TRPA on a first-come, first-served basis for any available allocations in the allocation pool. Allocations received under the Certified Local Government Moderate Income Housing Program are not limited to areas designated for the Multi-residential Incentive Program.
3. Annual allocations and sensitive lot retirements shall be made available on a first-come, first-served basis.

C. Distribution Requirements

Distribution of allocations, within the limits set in subsection 50.5.1 and consistent with subparagraph 50.5.2.A, shall be determined by the counties and city. If any county or city chooses not to distribute allocations within its jurisdiction, then TRPA shall distribute the allocations pursuant to an allocation system adopted by TRPA.

1. Each county and the city shall notify TRPA, in writing, of its election to not distribute allocations for a given year or years. Notification shall be received by TRPA no later than December 31 of the preceding year. The Governing Board may waive this deadline for good cause.
2. TRPA shall deliver allocations to the counties and city no later than January 15 of the year for which the allocations are reserved, or within 15 days of the effective date of an ordinance providing for award and distribution of residential allocations for that year, whichever is later.
3. Delivery of allocations shall be accomplished by providing each county and city with the number of allocation certificates that corresponds to the original allocations available to the jurisdiction in that year. The counties and city shall determine the receiving parcels pursuant to their respective allocation systems and shall indicate the county assessor's parcel number (APN) of the receiving parcel on the allocation certificate. The counties and city shall provide TRPA with a list of assessor parcel numbers that received an allocation. The original allocation forms shall be delivered to the owner of record of the receiving parcel and shall, in addition to the list, constitute evidence of receipt of an allocation.
4. TRPA shall number each allocation as shown in the following table:

TABLE 50.5.2-1: NUMBERING OF ALLOCATIONS

Indicator	Name	Examples
First set of letters	County or city of origin	WA, DG, PL, EL, SLT
First set of numbers	Year of issuance	87,88,89,90,91
Second set of letters	Type of allocation	O = original R = reissued LS = litigation settlement AP = allocation pool
Second set of numbers	Sequence of allocation	Douglas County: 1 through 23

Example: PL – 87 – R – 56

5. The counties and city shall notify each owner of a parcel receiving an allocation.
6. In the event an allocation is returned or forfeited for any reason, the county or city shall notify TRPA by returning the original allocation certificate and requesting a reissued allocation for assignment to another parcel. If the original allocation certificate cannot be returned to TRPA, the county or city shall notify TRPA of the reason, and the allocation shall be cancelled by depositing a notice of cancellation in the U. S. Mail, first class, postage prepaid, addressed to the last known address of the owner of the receiving parcel.

D. Administration

An allocation shall entitle the owner of the receiving parcel to either apply for a TRPA permit to construct an additional residential unit or to transfer the allocation to another parcel pursuant to Chapter 51: *Banking, Conversion, and Transfer of Development Rights*. Distribution of, and other transactions concerning allocations, shall be tracked, accounted for, and otherwise treated in accordance with Chapter 6: *Tracking, Accounting, and Banking*.

1. Upon receipt of the allocation certificate from the county, TRPA, or city, the owner of the parcel may file an application with TRPA to either construct a residential unit or transfer the allocation. Residential allocation application submission deadlines are set by local jurisdictions.

E. Performance Review System

1. Allocation Performance Table

Each jurisdiction shall receive a base allocation according to Table 50.5.2-2. The base allocation may be reduced incrementally according to subparagraphs 2 and 3 following the table.

- a. Each jurisdiction’s final allocation for the year shall be determined by TRPA by October 1.
- b. Beginning in 2015, allocations shall be released in two year increments. The Performance Review Committee (PRC) shall review the

performance of the local jurisdictions and TRPA every two years. The review committee shall consist of representatives of the participating counties, city, and TRPA. The committee shall review the performance criteria, and rate of allocation distribution, contained in subparagraphs 2 and 3 below. TRPA may establish guidelines to establish consistent evaluations and/or audits for subparagraphs 2 and 3 to assist the Performance Review Committee’s review. No jurisdiction shall receive more allocations than the maximum or fewer allocations than the minimum allocations for that jurisdiction shown in Table 50.5.2-2. When the total number of allocations available for distribution is fewer than the number shown in the table, TRPA shall apply the performance system proportionality to the remaining allocations.

TABLE 50.5.2-2: ALLOCATION PERFORMANCE TABLE FOR 2015-2032			
Jurisdiction	Minimum Allocation with Deductions	Deduction Increments	Base Allocation
Douglas County	2	2	10
El Dorado County	8	5.5	30
Placer County	11	6.5	37
City of South Lake Tahoe	10	5.75	33
Washoe County	3	1.75	10
Total	34		120

Note: One deduction increment equals the number of allocations shown for individual jurisdictions. If the final allocation results in a decimal ending in 0.5 or higher the allocation will be rounded up to the nearest whole number, if the decimal is below 0.5 the allocation will be rounded down to the nearest whole number.

2. Total Maximum Daily Load (TMDL) Implementation

By October 1 of each year, TRPA shall request annual conformance reports for the prior year from the Lahontan Regional Water Quality Control Board and Nevada Department of Environmental Protection. The base allocation for each jurisdiction may be awarded or reduced by the PRC as follows:

- a. For 2015 a jurisdiction shall receive their base allocation for conformance with California National Point Discharge Elimination System (NPDES) permits and Nevada Interlocal Agreements; and
- b. Beginning in 2016, a jurisdiction shall receive their base allocation for achieving above 90 percent or greater conformance with State approved annual Lake Clarity Credit targets; or
- c. A jurisdiction shall be penalized one increment of deduction for less than 90 percent to 75 percent conformance with State approved annual Lake Clarity Credit targets; or

- d. A jurisdiction shall be penalized two increments of deduction for less than 75 percent conformance with State approved annual Lake Clarity Credit targets.

3. Permit Monitoring and Compliance

By October 1 of each year, TRPA shall conduct a representative sample audit of not less than ten percent of the single-family residential permits issued in the prior year and compliance inspections performed the prior year by the counties, city, and TRPA. The base allocation may be awarded or reduced by the PRC according to the score as follows:

- a. A jurisdiction shall receive its base allocation for an average score of 90 percent or greater for both the project review portion and the compliance portion of the audit; or
- b. A jurisdiction shall be penalized one increment of deduction for average audit scores for both the project review portion and the compliance portion of the audit between 75 and 90 percent; or
- c. A jurisdiction shall be penalized two increments of deduction for average audit scores for both the project review portion and the compliance portion of the audit below 75 percent.

4. Short-Term Rental Neighborhood Compatibility

- a. A jurisdiction shall receive its base allocation for a score of 90 percent or greater based on short-term rental neighborhood compatibility guidelines established by TRPA that address short-term rental location, operations, and enforcement; or
- b. A jurisdiction shall be penalized one increment of deduction for a short-term rental neighborhood compatibility score between 75 and 89 percent; or
- c. A jurisdiction shall be penalized two increments of deduction for a short-term rental neighborhood compatibility score below 75 percent.

5. Allocations not distributed under the Performance Review System shall be assigned to TRPA's residential allocation incentive pool.

F. Monitoring Requirement

TRPA hereby establishes a monitoring fee that shall be collected by the entity issuing the allocation from each allocation recipient. The fee shall be used to monitor water quality impacts and permit conformance in accordance with the Rules of Procedure. The allocation monitoring fee shall be established in the Rules of Procedure.

50.1.3. Multi-Residential Allocations

A portion of the residential allocations set forth in subparagraph 50.5.1.C may be reserved for multi-residential use. These reserved allocations shall be used in connection with transfer of

development rights pursuant to Chapter 51: *Banking, Conversion, and Transfer of Development Rights*.

A. Reservation Pool

On an annual basis, a pool of allocations representing the desired level of multi-residential development for a given jurisdiction may be established by TRPA after consultation with the jurisdiction. Allocations assigned to the pool shall be within the limitations of Table 50.5.1-1. Unused allocations may be carried over to the next year's pool.

B. Allocations for Residential Projects

Except for allocations obtained by transfer pursuant to Chapter 51, or obtained directly as provided in subsection 50.5.2, allocations for residential projects shall be made upon project approval. Previously issued allocations or a letter from the appropriate county or city indicating allocations that are available from the reservation pool or have been reserved from a future year's allocation shall be required as part of the project application. TRPA may review residential projects for which allocations are reserved from future years, except that project approval shall be limited to units for which allocations are available at the time of approval.