Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 2556 (Nazarian) – As Amended April 5, 2016

SUBJECT: Density bonuses

SUMMARY: Requires a jurisdiction, in cases where a proposed development is replacing existing affordable housing units, to adopt a rebuttable presumption regarding the number and type of affordable housing units necessary for density bonus eligibility. Specifically, **this bill**:

1) Requires a jurisdiction, if the income of the household that occupies the unit is not known, to adopt a rebuttable presumption that lower income households occupied the units in the same proportion of lower income households to all households within the census tract, in which the development is located, as determined by the last decennial census.

2) Requires a jurisdiction, in cases where all dwelling units have been vacated or demolished within the five-year period preceding the density bonus application and the incomes of the persons and families in occupancy at the highpoint of the affordable units is not known, to adopt a rebuttable presumption that lower income households occupied these units in the same proportion of lower income households to all households within the census tract in which the development is located, as determined from the last decennial census.

3) Authorizes a jurisdiction, if the existing property has been subject to a form of rent or price control and has been occupied by a person or family with an income above lower income, to do the following:

    a. Require the replacement unit to be made available at affordable rent or affordable housing cost to, and occupied by, a low income person or family. If the replacement unit is required to be made available at affordable rent, the unit shall be subject to a recorded affordability restriction for at least 55 years.

    b. Require the replacement unit to be replaced in compliance with the rent or price control ordinance of the city, county, or city and county.

4) Requires the jurisdiction to ensure the initial occupant for all qualifying units are very low, low, or moderate income, as specified.

EXISTING LAW:

1) Defines "density bonus" as a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the local government.

2) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

3) Provides that the density bonus for low-, very low-, and moderate-income units increase incrementally according to a set formula.

4) Prohibits an applicant from receiving a density bonus or any other incentives or concessions if a proposed housing development or condominium project is located on any property that includes a parcel on which dwelling units have, at any time in the five-year period preceding the application, been:

    a. Occupied by lower- or very low-income households;

    b. Subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income; or

    c. Subject to any other form of rent or price control through a public entity's valid exercise of its police power.

5) Provides that a developer may overcome the above prohibition if the proposed housing development would replace the existing affordable units with at least the same number and type of affordable units and either of the following applies:

    a. The proposed housing development, inclusive of the replacement units, contains affordable units at the percentages set forth in density bonus law.

    b. Each unit in the development, exclusive of a manager's unit or units, is affordable to, and occupied by, either a lower or very low income household.

6) Defines "replace" to mean either:

    a. If any affordable housing units in the existing development are occupied on the date of application, the proposed housing development must provide at least the same number of units of equivalent size or type, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.

    b. If all affordable housing units in the existing development have been vacated or demolished within the five-year period preceding the application, the proposed housing development must provide at least the same number of units of equivalent size or type, or both, as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known.

FISCAL EFFECT: Unknown

COMMENTS: To help address California's affordable housing shortage, the Legislature enacted density bonus law to encourage the development of more affordable units. Under current law, a city or county must grant a density bonus, concessions and incentives, prescribed parking requirements, as well as waivers of development standards upon a developer's request when the developer includes a certain percentage of affordable housing in a housing development project.

Density bonus law was originally enacted in 1979, but has been changed numerous times since. SB 1818 (Hollingsworth), Chapter 928, Statutes of 2004, made significant changes to the law,

including reducing the number of housing units required to be provided at below market rate in order to qualify for a density bonus.

AB 2222 (Nazarian), Chapter 682, Statutes of 2014 encouraged the preservation of existing affordable units by prohibiting an applicant from receiving a density bonus, incentive, or concession if a proposed housing development or condominium project is located on property where dwelling units have, at any time in the five-year period preceding the application, been occupied by very low- or lower-income households or subject to rent control. An applicant may overcome this prohibition by at least replacing all of the existing affordable units with units of equivalent affordability, size and/or type.

In implementing the provisions of AB 2222, cities, housing advocates, and developers have discovered several places where the law needs clarification. AB 2222 did not address how to determine the number of units that have to be replaced when resident income information is not known. AB 2556 provides a method for making this determination, basing it on income data for the census tract in which the project is located. Additionally, AB 2222 did not provide guidance on what the rent level for the replacement unit should be in cases where the current occupant of the rent-controlled unit is not lower-income, for example due to wage increases. AB 2556 allows cities to require that these units be replaced either with a deed-restricted unit affordable to low-income families or with another rent-controlled unit. Although a jurisdiction cannot mandate that rent control apply to new developments, in this case developers may voluntarily choose to comply and offer units rent-controlled units if they are seeking a density bonus for their project. For developers, one benefit of rent-controlled units relative to affordable units is that the former generally include an escalator for rent increases.

Purpose of the bill: According to the author, "There is a need to clarify language in AB 2222. This bill maintains the intent of AB 2222 in requiring developers to replace affordable units while providing greater clarity for developers and local governments in meeting replacement requirements. AB 2556 recognizes that adequate affordable housing is an issue of statewide concern. This bill preserves and promotes the supply of affordable units for years to come".

Arguments in support: According to the sponsors, Western Center on Law and Poverty and the California Rural Legal Defense Foundation: "In implementing the provisions of AB 2222, cities, housing advocates, and developers have discovered several places where the law needs clarification. AB 2222 required the replacement of rent-controlled units, but did not provide guidance on what the rent level for the replacement unit should be in cases where the current occupant of the rent-controlled unit is not lower-income. AB 2556 allows cities to require that these units be replaced either with a deed-restricted unit affordable to low-income families or with another rent-controlled unit."

Committee amendments:

On page 6, delete lines 15 to 32 and replace with:

"(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement unit be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) Require that the unit be replaced in compliance with the jurisdiction's rent or price control ordinance."

Double referred: If AB 2556 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (co-sponsor)
Western Center on Law & Poverty (co-sponsor)

Opposition

None on file

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