

Date of Hearing: April 30, 2014

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Ed Chau, Chair

AB 2222 (Nazarian) – As Amended: April 22, 2014

SUBJECT: Housing: Density Bonus.

SUMMARY: Prohibits an applicant from receiving a density bonus unless the proposed housing development or condominium project would maintain the number and proportion of affordable housing units within the proposed development, and increases the required affordability from 30 years or longer to 55 years or longer. Specifically, this bill:

- 1) 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.
- 2) Provides that the above prohibition shall not apply if the proposed housing development or condominium project would maintain the number and proportion of affordable housing units within the development, as well as include the additional set aside of affordable units under the density bonus formula.
- 3) Increases the affordability requirement of all low- and very low-income units that qualified an applicant for a density bonus from 30 years or longer to 55 years or longer.

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) Requires local governments to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:
 - a) 10% of the total units for lower-income households;
 - b) 5% of the total units for very-low income households;

- c) A senior citizen housing development or mobilehome park; and,
 - d) 10% of the units in a common-interest development (CID) for moderate-income households.
- 4) Provides that, when an applicant for approval to convert apartments to a condominium project agrees to provide at least 33% of the total units of the proposed condominium project to persons and families of low- or moderate-income, or 15% of the total units of the proposed condominium project to lower-income households, and agrees to pay for the reasonably necessary administrative costs incurred by a local government, the local government must either grant a density bonus or provide other incentives of equivalent financial value.
- 5) Provides that a local government, when considering an application for approval to convert apartments to a condominium project, may place reasonable conditions on the granting of a density bonus or other incentives.
- 6) Provides that the density bonus for low-, very low-, and moderate-income units increase incrementally according to a set formula.
- 7) Requires that the applicant agree to continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 8) Provides a 15% density bonus to the developer of a market-rate housing project who donates land to a local government that could accommodate housing for very low-income households equal to at least 10% of the number of units in the development, subject to certain conditions. For each one percent increase above the 10%, the density bonus increases by 1% up to a maximum combined density increase of 35%.
- 9) Requires that applicants receive incentives or concessions unless the local government makes a written finding, based upon substantial evidence, that
- a) The concession or incentive is not needed to provide the affordable housing;
 - b) The concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource; or
 - c) The concession or incentive would be contrary to state or federal law.
- 10) Specifies that concessions or incentives may include the following:
- a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards.
 - b) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and are compatible with the project and the surrounding area.

- c) Other regulatory incentives or concessions proposed by the developer or the local government that result in identifiable, financially sufficient, and actual cost reductions.
- 11) Requires local governments to provide applicants with the following number of incentives or concessions:
- a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for persons and families of moderate-income in a common interest development.
 - b) Two incentives or concessions for projects that include at least 20% of the total units for lower-income households, at least 10% for very low-income households, or at least 20% for persons and families of moderate-income in a common interest development.
 - c) Three incentives or concessions for projects that include at least 30% of the total units for lower-income households, at least 15% for very low-income households, or at least 30% for persons and families of moderate-income in a common interest development.
- 12) Authorizes an applicant to initiate judicial proceedings if the local government refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant the request is in violation of density bonus law, the court will award the plaintiff reasonable attorney's fees and costs.
- 13) Prohibits a local government from applying any development standard that will have the effect of precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 14) Authorizes a developer to request a waiver or reduction of development standards that will have the effect of physically precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 15) Requires the local government to grant either an additional density bonus or and additional concession or incentive when the applicant proposes to include a child care facility in or adjacent to the housing development.
- 16) Provides that, upon the developer's request, the local government may not require parking standards greater than the following:
- d) Zero to one bedrooms: one onsite parking space;
 - e) Two to three bedrooms: two onsite parking spaces; and
 - f) Four or more bedrooms: two and one-half parking spaces.

(Government Code Sections 65915- 65915.5)

FISCAL EFFECT: None.

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. Developers are entitled to benefits under the density bonus law when they include as few as one affordable housing unit as part of an otherwise market-rate project. A housing project with only 5% very low-income housing is entitled to a 20% density bonus, one concession, unlimited waivers from development standards, and reduced parking standards for the entire project.

AB 2222 addresses the preservation of existing affordable units. Under existing law, a developer proposing to develop a residential project, or an applicant for approval to convert apartments to a condominium project, qualifies for a density bonus if the proposed project has a specific percentage of units set-aside for affordable housing. This bill would prohibit 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.

However, an applicant may overcome this prohibition by, in addition to the percentage of units already set-aside for affordable housing under the density bonus formula, replacing all existing affordable units with units of equivalent affordability and size and/or type. The Committee may wish to accept amendments, listed below under "Committee Amendments", that provides a 100% affordable project must only replace all existing affordable units. Additionally, AB 2222 increases the required affordability from 30 years or longer to 55 years or longer for all affordable units that qualified an applicant for a density bonus.

Purpose of the bill:

Adequate and affordable housing is an issue of statewide concern but, according to the author, the change made to density bonus law by SB 1818 had the reverse effect and resulted in fewer affordable units. AB 2222 ensures that affordable units are preserved when a developer proposes to demolish a site and the new proposal is to replace the prior structure with a new residential structure by ensuring that the project begins with the same number of affordable units. AB 2222 also increases the affordability requirement from 30 years to 55 years for all affordable units that qualified an applicant for a density bonus, which is consistent with other state and local programs and promotes the supply of affordable units for years to come.

Committee Amendments:

The Committee may wish to accept the following amendments:

- 1) On page 5, in line 4, strike out "." and insert:

unless all of the units in the development are affordable to and occupied by lower-income households.

- 2) On page 16, in line 7, strike out "." and insert:

unless all of the units in the development are affordable to and occupied by lower-income households.

Double referred: If AB 2222 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Rebecca Rabovsky / H. & C.D. / (916) 319-2085