

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 915 (Ting) – As Amended May 2, 2017

SUBJECT: Planning and zoning: density bonus: affordable housing ordinances: City and County of San Francisco.

SUMMARY: Requires, if the City and County of San Francisco has adopted an inclusionary housing ordinance, that the City and County apply that ordinance to the total number of housing units, including any additional housing units granted under a density bonus, unless the city, county or city and county exempts those additional units from the ordinance. Specifically, **this bill:**

- 1) Requires, if the City and County of San Francisco has adopted an ordinance requiring an affordable housing minimum percentage for housing development, the City and County to apply that ordinance to the total number of housing units in the development, including any additional housing units granted pursuant to Density Bonus law, unless the City and County exempts those additional housing units from the ordinance.
- 2) Specifies that 1), above, does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, the City and County of San Francisco before January 1, 2018.
- 3) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely severe shortage of affordable housing within the City and County of San Francisco.

EXISTING LAW:

- 1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.
- 2) Requires cities and counties 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) Ten percent of the total units for lower-income households;
 - b) Five percent of the total units of a housing for very low-income households;
 - c) A senior citizen housing development or mobilehome park; and,
 - d) Ten percent of the units in a common-interest development (CID) for moderate-income households.
- 3) Requires that the density bonus for low-, very low-, and moderate-income units increase incrementally according to the following formula:

- a) For each 1% increase above 10% for low-income units, the density bonus shall increase by 1.5% to a maximum of 35%;
 - b) For each 1% increase above 5% for very low-income units, the density bonus shall increase by 2.5% to a maximum of 35%; and,
 - c) For each 1% increase above 10% for moderate-income units, the density bonus shall increase by 1% to a maximum of 35%.
- 4) Requires cities and counties to provide an applicant for a density bonus concessions and incentives based on the number of below market-rate units included in the project as follows:
- a) One incentive or concession if the project includes at least 10% of the total units for low-income households, 5% for very low-income households, or 10% for moderate-income households in a CID;
 - b) Two incentives or concessions if the project includes at least 20% of the total units for low-income households, 10% for very low-income households, or 20% for moderate-income households in a CID; and,
 - c) Three incentives or concessions if the project includes at least 30% of the total units for low-income households, 15% for very low-income households, or 30% for moderate-income households in a CID.
- 5) Specifies that concessions or incentives may include the following:
- a) A reduction in site development standards;
 - b) A modification of zoning code requirements or architectural design requirements that exceed the minimum building standards, including a reduction in setbacks, square footage requirements, or parking requirements, that results in identifiable, financially sufficient, and actual cost reductions;
 - c) 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 if such nonresidential uses are compatible with the project; or,
 - d) Other regulatory incentives or concessions proposed by the developer or the city or county that result in identifiable cost reductions.
- 6) Requires the local government to grant the incentive or concession requested by the developer, unless the city or county makes written findings that:
- a) The concession or incentive is not needed to provide the affordable housing; or,
 - b) That the concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource.
- 7) Prohibits a city or county 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.

- 8) Allows a developer to request a waiver or reduction of development standards.
- 9) Specifies that the developer must show that the requested waiver or modification of development standards is necessary to make the housing units economically feasible.
- 10) Defines "development standard" to include site and construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.
- 11) Requires a city or county to grant either an additional density bonus or an additional concession or incentive when the applicant proposes to include a child care facility in or adjacent to the housing development.
- 12) Provides a 15% density bonus to the developer of any market-rate housing project who donates land to a city or county that could accommodate housing for very low-income households equal to at least 10 % of the number of units in the market-rate development. For each one percent increase above the 10 % the density bonus shall increase by one percent up to a maximum combined density increase of 35 %.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill requires, if the City and County of San Francisco has adopted an ordinance requiring an affordable housing minimum percentage for housing development, that the City and County apply that ordinance to the total number of housing units in the development, including any additional housing units granted pursuant to Density Bonus law, unless the City and County exempts those additional housing units from the ordinance. The bill specifies that this does not apply to an applicant seeking a density bonus for a proposed housing development if his or her application was submitted to, or processed by, the City and County of San Francisco before January 1, 2018.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "Housing costs are uprooting families and reducing access to high-wage jobs of the future. Across California, families overpay for housing and commute great distances from what they can afford. This bill will mean communities get more affordable housing when awarding developers bonus units for greater housing density."
- 3) **Background on Density Bonus Law.** Density bonus law was originally enacted in 1979, to help address the affordable housing shortage and to encourage development of more low- and moderate-income housing units. Nearly forty years later, the Legislature faces the same challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100% affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of a city's zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must 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:

- Five percent of the total units of a housing for very low-income households;
- Ten percent of the total units for lower-income households;
- A senior citizen housing development or mobilehome park; and,
- Ten percent of the units in a common-interest development (CID) for moderate-income households.

A developer can submit a request to a local government as part of their density bonus application for incentives and concessions. Developers can receive the following number of incentives or concessions:

- 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 moderate-income households in a common interest development.
- Two incentives or concessions for projects with at least 20% lower-income households, at least 10% for very low-income households, or at least 20% for moderate-income households in common interest developments.
- Three incentives or concessions for projects with at least 30% lower-income households, at least 15% for very low-income households, or at least 30% for moderate-income households in common interest developments.

- 4) **Latinos Unidos Del Valle De Napa Y Solano v. County of Napa:** In 2013, the First District Court of Appeal heard a suit brought by low-income farmworkers in Napa County (*Latinos Unidos Del Valle De Napa Y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013)). The suit attacked the validity of the housing element, the County's density bonus ordinance and the discrimination against affordable housing and minorities allegedly caused by the County's zoning laws. The Court of Appeal reversed in part the trial court judgment and held that the county's density bonus ordinance unlawfully conflicts with the state Density Bonus Law.

In 2010, Napa County adopted an ordinance implementing state Density Bonus Law, which required local governments to grant a density bonus and certain incentives and concessions when a developer agrees to include a certain percentage of affordable units. At the same time, Napa also adopted an inclusionary housing ordinance that required up to 20% of new dwelling units in a residential development project to be made available at prices affordable to moderate-income households. However, the inclusionary ordinance stated that affordable units that qualify a project for a density bonus must be provided in addition to the affordable

units required by the inclusionary ordinance. So, for example, if a developer includes 10% low- income units to qualify for a density bonus (as required by state law), this would not count towards the percentage of affordable units required by the inclusionary ordinance. The court, looking at previous case law and legislative history, agreed with plaintiffs that Napa County's density bonus ordinance was invalid in that it would require a developer to go above and beyond state law requirements to obtain a density bonus. The court noted that "[a] handful of local jurisdictions have argued since 1979 that the density bonus law does not apply until inclusionary requirements have been met. The vast majority of cities, counties and experts take the opposite view, as do I." The county's ordinance, which failed to credit affordable units satisfying the county's inclusionary requirement toward satisfying the density bonus requirements, failed to comply with state law.

- 5) **Arguments in Support.** Supporters argue that the bill strikes a commonsense balance that the total number of units in a housing development are subject to the affordability requirements of the city, unless the jurisdiction chooses otherwise.
- 6) **Arguments in Opposition.** Opponents believe that forcing an additional number of affordable units in exchange for a density bonus will create a disincentive for developers to enter into an agreement with the local government at all.
- 7) **Double-Referral.** The March 15, 2017, version of this bill, which was applicable to all cities and counties, was heard in the Housing and Community Development Committee on April 26, 2017, and passed on a 5-2 vote. Amendments taken in that Committee narrowed the scope of the bill to only include the City and County of San Francisco.

REGISTERED SUPPORT / OPPOSITION (All letters received from groups below were referencing the March 15, 2017, version of the bill):

Support

Council of Community Housing Organizations
Homeownership San Francisco
Mission Economic Development Agency
PODER
Santa Monicans for Renters' Rights
Senior and Disability Action
Tenants Together

Opposition

California Apartment Association
California Association of Realtors
California Building Industry Association
CalChamber
California Renters Legal Advocacy and Education Fund
East Bay Forward
East Bay Rental Housing Association
Grow the Richmond
North Valley Property Owner Association
Progress Noe
San Francisco Housing Action Coalition
Tech for Housing
YIMBY Action

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