

LEGISLATURE ENHANCES DENSITY BONUS, OTHER INCENTIVES

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Amendments to state law providing for density bonuses and other incentives may make it more attractive for developers to include lower-income housing in their projects.

The Legislature, in response to the escalating difficulty of providing affordable housing, has made it easier for developers to qualify for density bonuses, increased the size of the available density bonus, and specified the number of other concessions or incentives that a municipality must provide.

Over the objections of local governments, the Legislature passed, and the governor signed, SB 1818, which went into effect the first of this year and which amends Government Code section 65915.

The measure was co-sponsored by an unusual coalition, but one whose members share an interest in producing more affordable housing: the California Association of Realtors, the California Rural Legal Assistance Foundation and the Western Center on Law and Poverty.

The amended law makes it easier to qualify for density bonuses. Formerly, 20 percent of the total units had to be lower-income housing. Now, 10 percent is sufficient.

If a developer is providing housing for very low-income households, only 5 percent of the units must so qualify; previously, the minimum was 10 percent. For condominium projects, if 10 percent of the units are for moderate-income households, a developer qualifies for a bonus. Formerly, the minimum was 20



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percent.

Under prior law, qualifying projects were entitled to build 25 percent more units than the zoning would otherwise allow. Although the amended law drops this to 20 percent, the density bonus percentage increases incrementally as the percentage of qualifying housing exceeds the minimum that entitles the project to a bonus, up to a maximum bonus of 35 percent.

Developers may now get a density bonus without actually providing low-income housing. Under the amended law, a developer is entitled to a density increase of up to 35 percent more units if it donates land sufficient to permit construction of very low-income housing units in an amount not less than 10 percent of the total number of units in the development.

A developer can combine construction of some qualified housing with donation of land, but in no case can the density bonus exceed 35 percent.

Prior to amendment, the density bonus law was uncertain as to the number of concessions or incentives

to which a developer of qualified housing was entitled, in addition to a density bonus.

Concessions or incentives consist of reductions in site development standards or modification of zoning code requirements or architectural design requirements that exceed minimum building standards.

Examples of such concessions or incentives include reduction in setback requirements or off-street parking requirements. Incentives and concessions can also be in the form of approval of mixed use zoning in conjunction with residential development.

Under prior law, a local agency was required to grant at least one concession or incentive. Now, the award of incentives or concessions is more specific. A developer providing below market rate units is entitled to one incentive or concession if the project includes at least 10 percent of the total units for low- or moderate-income households, or 5 percent very low-income; two incentives or concessions if the project includes at least 20 percent of the total units for low- or moderate-income households; or three incentives or concessions if the project includes at least 30 percent of the total units for low-income or moderate-income households, or 15 percent very low-income households.

The amended density bonus law has a specific new provision that can ease off-street parking requirements. At the developer's request, no local agency can require a vehicle parking ratio for a housing development providing below-market rate housing that exceeds one space for a one bedroom unit, two spaces for two- or three-bedroom units, or two and one-

half spaces for larger units.

Moreover, a developer is afforded flexibility in how it provides the required spaces. Tandem or uncovered spaces are specifically permitted.

The amended density bonus law broadens the definition of "housing developments" that can take advantage of the bonus, incentive and concession provisions in a way that reduces the percentage of below-market rate housing that must be provided by certain condominium conversion projects.

Another provision of the Government Code provides density bonuses and incentives for condominium conversion projects generally, and sets the thresholds at levels higher than those that apply to other residential projects. Condo conversion projects must provide at least 33 percent of total units to households of low or moderate income, or 15

percent to lower income households.

But the amended density bonus law makes eligible for the newly reduced eligibility thresholds those condo projects entailing either the substantial rehabilitation of an existing commercial building to residential use or the substantial rehabilitation of existing multifamily residential units, where the result of the rehabilitation is a net increase in available residential units.

However, whether the enhancements to the density bonus law will actually result in the production of additional below market rate units remains to be seen.

Given local governments' opposition to the changes in the law, cities and counties - which must now amend their ordinances implementing the density bonus law to conform to the new provisions -restrictions may be imposed that could undermine the additional incentives that the

Legislature intended to provide for the production of additional affordable housing.

Moreover, given community resistance to high densities and reduced off-street parking requirements, developers may be reluctant to pursue the potential benefits of the enhanced density bonus law. Only time and experience will tell whether the good intentions of the Legislature will bear fruit in the form of increased below market rate housing.

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