NEW LEGISLATION UPDATE TO

A GUIDE TO CALIFORNIA DENSITY BONUS LAW (*AT LEAST UNTIL THE NEXT LEGISLATIVE SESSION*)

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NEWLY ENACTED DENSITY BONUS BILLS

This update provides a brief description of the four density bonus bills that have been passed by the Legislature and were signed by Governor Jerry Brown on September 28, 2016 and effective on January 1, 2017.

AB 2501 (Bloom)

AB 2501 contains the broadest changes in the density bonus statute (Government Code Section 65915).

The bill's chief provisions follow:

1. 'Round Up.' All density calculations must be 'rounded up,' including base density; the number of bonus units; and the number of affordable units required to be eligible for a density bonus.

2. Application Procedures. All cities must adopt procedures and timelines for processing a density bonus application; provide a list of submittal requirements; and notify applicants whether the application is complete as required by the Permit Streamlining Act.

3. Standards for Incentives and Concessions. A revised definition of "incentives and concessions" requires that they result in "identifiable and actual cost reductions to provide for affordable housing costs." Under the law in effect until December 31, 2016, "incentives and concessions" must result in "identifiable, *financially sufficient*, and actual cost reductions." Similarly, the standard for denial has been changed to allow denial if the concession "does not result in identifiable and actual cost reductions… to provide for affordable housing costs." The intent appears to be to confine incentives and concessions to modifications that actually reduce costs.

   Other changes regarding concessions state that the city must bear the burden of proof if it denies a concession, and clarifies that developers eligible for a density bonus may request a concession even if they do not request a density bonus. Additionally, the statute clarifies that the parking reductions contained in the statute are provided *in addition to* any concessions that the project may receive.

4. Mixed-Use Developments. The statute clarifies that a bonus is available for housing in mixed-use developments. This is consistent with the current practice of most communities.

5. Liberal Interpretation. The statute must be interpreted liberally to produce the maximum number of housing units.

AB 2556 (Nazarian)

This is a cleanup bill to Assemblymember Nazarian's AB 2222, effective January 1, 2015, which required that, to be eligible for a density bonus, a project must "replace" rental housing that currently exists or existed in the past five years and is (or, if vacant or demolished, was) occupied by low income or very-low income households or subject to a deed restriction. In many cases, owners could not obtain tenant incomes after the initial lease was signed, or if units were vacant or had been demolished, and it could not be determined how many replacement units were required. Additionally, the replacement units were required to be "of equivalent size or type," and there was no guidance regarding how to interpret that provision. The provisions regarding rent-controlled units were also not comprehensible.

The major provisions of AB 2556 are:

1. Unknown Incomes. Where incomes of existing or former tenants are unknown, the required percentage of affordability is determined by the percentage of low and very-low-income renters in the jurisdiction as shown in the HUD Comprehensive Housing Affordability Strategy database.

2. 'Equivalent Size or Type.' "Equivalent size" is defined as having the same total number of bedrooms as the units to be replaced. This allows a developer to replace existing large units with more, smaller units; for instance, a developer could replace one three-bedroom unit with three one-bedroom units. However, because an equal number of units must be built as those that are lost, the developer could not replace three one-bedroom units with one three-bedroom unit.

3. Rent-Controlled Units. If tenants are low or very-low income, or if tenant incomes are unknown, the units must be replaced as required for all projects. If tenants' incomes are above low income, then, at the option of the City, either *all* of these units shall be replaced with low income units, or all the units shall be replaced "in compliance with the jurisdiction's rent or price control ordinance," but do not necessarily need to be subjected to a deed restriction.

AB 2442 (Holden)

AB 2442 provides a density bonus for projects where 10 percent of the total units are reserved for very-low income transitional foster youth, disabled veterans, and homeless persons.

However, the bonus equals only 20 percent of the units reserved for youth, veterans, or the homeless. Because such a project would also be eligible for a 32.5 percent bonus for very-low income housing, the bill would likely have no practical effect. (Example: 100-unit project where 10 units are reserved for very-low income youth, veterans, or homeless persons. AB 2442 would provide a bonus of 2 units. The existing very-low income bonus would provide a bonus of 33 units.)

AB 1934 (Santiago)

AB 1934 requires cities to grant a "development bonus" to a commercial development where the developer has entered into a contract with a housing developer to construct a housing project of any size where either 30 percent of the units are designated for low income households or 15 percent of the units are designated for very-low income households. The affordable housing developer may also request a density bonus and all other incentives available under the density bonus statute for the housing development.

The affected city must approve the contract between the commercial developer and the housing developer, and the "development bonus" must be mutually agreed upon by the City and the commercial developer. There are no standards in the statute for determining the development bonus. Consequently, local agencies retain substantial control over the project and the development bonus provided to the commercial developer.