June 14, 2017

TO:        Mark Herwick, LDCC  
           Carmen Sainz, Field Offices  
           Kim Szalay, Land Divisions  
           Samuel Dea, Zoning Permits North  
           Maria Masis, Zoning Permits East  
           Nooshin Paidar, Zoning Permits West  
           Rob Glaser, Coastal Permits  

FROM:      Sorin Alexanian, Deputy Director

ASSEMBLY BILL (AB) 2222 AND (AB) 2556 NAZARIAN, PLANNING AND ZONING DENSITY BONUS

On September 27, 2014, the Governor approved Assembly Bill (AB) 2222 (Nazarian), which amends the State Density Bonus Law (Section 65915 of the Government Code) pertaining to the replacement of affordable units, the duration of affordability for affordable rental units, and the equity sharing agreement required for affordable for-sale units. With the passage of AB 2556 (Nazarian) on September 28, 2016, those requirements have slightly changed. This memo supersedes the memo issued by my office regarding AB 2222 dated on July 6, 2016. I encourage you to discuss these modifications with your respective staff in order to provide a consistent transition to the new regulations.

Please be aware of the following changes to State law pertaining to the replacement of affordable units, the duration of affordability for affordable rental units, and the equity sharing agreement required for affordable for-sale units. Until such time when the County Zoning Code (Title 22) is amended to comply with the amended state law, the following changes shall supersede any contrary provisions in Title 22 and shall apply to Housing Permit applications for qualified projects with affordable housing set-asides except with respect to requests for a density bonus or incentive authorized exclusively by Section 22.52.1880 (Affordable Housing Option):¹

I. Replacement of Affordable Units

The following “no net loss” policy for affordable units shall apply to applications filed after January 1, 2015:

A. A proposed development is ineligible for a density bonus and any related incentives unless it replaces the lower and/or very low income affordable rental units that currently

¹ Density bonuses or incentives approved pursuant to Section 22.52.1880 (Affordable Housing Option) are County-authorized bonuses and incentives in addition to and beyond those authorized under State law, and therefore are not affected by AB 2222.
exist, or existed on the project site during the five-year period prior to application submittal if the units have been vacated or demolished, and either:

1. Provides affordable housing set-asides equal to or greater than the percentages shown in Table A of Section 22.52.1830; or
2. Provides all units in the proposed development (excluding manager unit) as affordable to lower or very low income households.

B. The number and types of the replacement units shall be subject to the following:

1. Affordable housing set-aside is inclusive of the replacement units. The replacement units can be counted toward the affordable housing set-aside.
2. Replacement units must be provided through adaptive reuse or new construction.
3. Replacement units can be rental (subject to 55 years of affordability as stated below) or for-sale (subject to the equity sharing model stated below).
4. All replacement calculations resulting in fractional units shall be rounded up to the next whole number.
5. Replacement units can be provided at a deeper level of affordability, but the required number of replacement units shall not be reduced as a result.

C. In addition to other application materials required pursuant to Part 18 of Chapter 22.56, applicants must submit the attached “Pre-Existing Site Conditions and Occupant Income Certification.” Staff should use the information provided in the certification to determine the number, types, sizes, and level of affordability of the replacement units.

1. Pre-Existing Site Condition

The state Density Bonus Law defines lower and very low income affordable rental units very broadly. The definition includes any rental units occupied by lower or very low income households or during the prior five years if the units have been vacated or demolished, regardless of how much rent the occupants actually pay/paid. This new requirement makes it essential for applicants to fully investigate the existence of affordable rental units on the project site, even if the site is vacant at the time of application submittal.

If, upon investigation, the applicant reports that no residential use exists or ever existed on site in the five-year period prior to application submittal and selects one of the highlighted statements shown below in Section 2 of the certification, the
proposed development shall not be subject to the new affordable unit replacement requirement.

**Scenario 1: No existing or recent residential use**

### 2. Pre-Existing Site Condition (Check all that apply)

- **Existing Residential Use** *(Complete table in Section 3.)*
  - Existing residential use is subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. *(Attach copy of the covenant and agreement.)*
  - At least one of the existing units is currently occupied by a lower or very low income household.
  - None of the existing units is currently occupied by a lower or very low income household.
  - Income of occupants is unknown due to lack of documentation.

- **Existing Non-Residential Use**
  - Subject property has been developed with a non-residential use for the past five years prior to my Housing Permit application submittal.
  - Subject property was developed with a non-residential use, but it was developed with a residential use during the five-year period prior to my Housing Permit application submittal. *(Complete table in Section 3.)*
  - Residential use was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. *(Attach copy of the covenant and agreement.)*
  - At least one of the units was occupied by a lower or very low income household.
  - None of the units was occupied by a lower or very low income household.
  - Income of previous occupants is unknown due to lack of documentation.

- **Vacant Lot or Vacated Unit(s)**
  - Subject property has been vacant for the past five years prior to my Housing Permit application submittal.
  - Subject property was developed with a non-residential use during the five-year period prior to my Housing Permit application submittal.
  - Subject property was developed with a residential use during the five-year period prior to my Housing Permit application submittal. *(Complete table in Section 3.)*
  - Residential use was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. *(Attach copy of the covenant and agreement.)*
  - At least one of the units was occupied by a lower or very low income household.
  - None of the units was occupied by a lower or very low income household.
  - Income of previous occupants is unknown due to lack of documentation.

On the other hand, if the applicant reports that the project site is/was developed with a residential use in the five-year period and selects one of the highlighted statements shown below, the applicant must select the sub-statement(s) that best describe the pre-existing residential use, and complete the “Replacement Unit Determination” table in Section 3 of the certification. If the pre-existing residential use is/was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households, the applicant must also provide a copy of such covenant and agreement.
Scenario 2: Existing or recent residential use

2. Pre-Existing Site Condition (Check all that apply)

☐ Existing Residential Use (Complete table in Section 3.)
- Existing residential use is subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. (Attach copy of the covenant and agreement.)
  - At least one of the existing units is currently occupied by a lower or very low income household.
  - None of the existing units is currently occupied by a lower or very low income household.
  - Income of occupants is unknown due to lack of documentation.

☐ Existing Non-Residential Use
- Subject property has been developed with a non-residential use for the past five years prior to my Housing Permit application submittal.
- Subject property is developed with a non-residential use, but it was developed with a residential use during the five-year period prior to my Housing Permit application submittal. (Complete table in Section 3.)
  - Residential use was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. (Attach copy of the covenant and agreement.)
  - At least one of the units was occupied by a lower or very low income household.
  - None of the units was occupied by a lower or very low income household.
  - Income of previous occupants is unknown due to lack of documentation.

☐ Vacant Lot or Vacated Unit(s)
- Subject property has been vacant for the past five years prior to my Housing Permit application submittal.
- Subject property was developed with a non-residential use during the five-year period prior to my Housing Permit application submittal.
- Subject property was developed with a residential use during the five-year period prior to my Housing Permit application submittal. (Complete table in Section 3.)
  - Residential use was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. (Attach copy of the covenant and agreement.)
  - At least one of the units was occupied by a lower or very low income household.
  - None of the units was occupied by a lower or very low income household.
  - Income of previous occupants is unknown due to lack of documentation.

2. Replacement Units

If any units are/were subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households, the proposed development shall replace the same number of covenant-restricted affordable units, with the same total number of bedrooms as the units being replaced. Staff shall review the covenant and agreement and the associated zoning case files to determine the size and/or type of the replacement units.

For units that are/were not covenant-restricted, the number of required replacement units shall be determined based on the information provided in the “Replacement Unit Determination” table in Section 3 of the certification, subject to any independent confirmation by staff.
All replacement units shall contain at least the same total number of bedrooms as the units being replaced.

II. Duration of Affordability for Rental Units

For very low and lower income rental units, the duration of affordability set forth in Section 22.52.1830 A.1.a.ii. is increased to 55 years from the issuance of the certificate of occupancy. Please note that the extended duration of affordability applies to applications that were not approved before January 1, 2015.

III. Duration of Affordability for For-Sale Units

In addition to moderate income for-sale units in common interest developments, very low and lower for-sale units are also subject to an equity sharing model rather than a long-term resale restriction. The covenant and agreement for very low and lower for-sale units shall include provisions restricting the initial sale to eligible buyers, and requiring an equity sharing agreement with the County that states the terms set forth in Section 22.56.2630 A.6.e. Please note that this change applies to applications that were not approved before January 1, 2015.

If you have any questions regarding AB 2222 and AB 2556, please contact Connie Chung in the General Plan Development and Housing Section at (213) 974-6417, or at cchung@planning.lacounty.gov.

SA:CC:lm

c: Richard Bruckner, Director
    Dennis Slavin, Chief Deputy Director
    Jon Sanabria, Deputy Director
    Mark Child, Deputy Director
    Mitch Glaser, Asst. Administrator
    Connie Chung, Section Head, General Plan and Housing
    Jill Jones, County Counsel
    Starr Coleman, County Counsel
    Larry Newnam, Supervisor, Community Development Commission

Attachment: Pre-Existing Site Conditions & Occupant Income Certification

061417__Assembly Bill (AB) 2222 and (AB) 2556

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Please note that it is a County policy to include projects with moderate income (single-family) housing set-asides as a type of developments eligible for density bonuses, since California law only mandates local jurisdictions to grant density bonuses to qualified projects with moderate income housing set-asides in common interest developments (i.e. condominiums). Until such time when Title 22 is amended if the County changes its policy, the 30 years of affordability set forth in Section 22.52.1830 A.1.a.ii. shall remain in full force and effect for qualified projects with moderate income (single-family) housing set-asides.

HOA.100002337.1
PRE-EXISTING SITE CONDITIONS & OCCUPANT INCOME CERTIFICATION
(FOR PROJECTS WITH AFFORDABLE HOUSING SET-ASIDES)

Except for projects filed pursuant to Section 22.52.1880 (Affordable Housing Option) of the County Zoning Code (Title 22), this certification must be submitted with all other Housing Permit applications for qualified projects with affordable housing set-asides. Please read the following instructions carefully:

Pursuant to Sections 65915 of the Government Code, effective January 1, 2015, applicants are required to replace all of a property’s pre-existing lower and/or very low income affordable rental units in order to become eligible for a density bonus and related incentives. Information provided in this certification will be used to determine the number, types, sizes, and level of affordability of the replacement units. Answer all applicable questions to the best of your knowledge. Failure to provide accurate and complete information will delay review.

**1. Subject Property**
Assessor’s Parcel Number(s)

Property Address or Site Location

**2. Pre-Existing Site Condition (Check all that apply)**

- **Existing Residential Use** *(Complete table in Section 3.)*
  - Existing residential use is subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. *(Attach copy of the covenant and agreement.)*
  - At least one of the existing units is currently occupied by a lower or very low income household.
  - None of the existing units is currently occupied by a lower or very low income household.
  - Income of occupants is unknown due to lack of documentation.

- **Existing Non-Residential Use**
  - Subject property has been developed with a non-residential use for the past five years prior to my Housing Permit application submittal.
  - Subject property is developed with a non-residential use, but it was developed with a residential use during the five-year period prior to my Housing Permit application submittal. *(Complete table in Section 3.)*
    - Residential use was subject to a recorded covenant and agreement restricting rents to levels affordable to lower and/or very low income households. *(Attach copy of the covenant and agreement.)*
    - At least one of the units was occupied by a lower or very low income household.
    - None of the units was occupied by a lower or very low income household.
    - Income of previous occupants is unknown due to lack of documentation.

*(Continue on pg. 2)*
3. Replacement Units Determination (Complete ONE of the tables, Table A OR Table B below)

**TABLE A. AFFORDABILITY-UNKNOWN**

<table>
<thead>
<tr>
<th>Unit Status</th>
<th>Unit Size</th>
<th>Number of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently Occupied or Occupied in Last Five Years</td>
<td>Studio (no bedroom)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 bedroom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 or more bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Very Low (45% of total)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lower (19% of total)</td>
<td></td>
</tr>
<tr>
<td>Currently Unoccupied in Existing Development</td>
<td>Studio (no bedroom)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 bedroom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 or more bedrooms</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Very Low (45% of total)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lower (19% of total)</td>
<td></td>
</tr>
</tbody>
</table>
## TABLE B. AFFORDABILITY-KNOWN

<table>
<thead>
<tr>
<th>Unit Status</th>
<th>Income Level</th>
<th>Unit Size</th>
<th>Number of Units</th>
</tr>
</thead>
</table>
| **Currently Occupied or Occupied in Last Five Years**
|                                          | Very Low     | Studio (no bedroom)     |                 |
|                                          |              | 1 bedroom               |                 |
|                                          |              | 2 bedrooms              |                 |
|                                          |              | 3 bedrooms              |                 |
|                                          |              | 4 or more bedrooms      |                 |
|                                          | Lower        | Studio (no bedroom)     |                 |
|                                          |              | 1 bedroom               |                 |
|                                          |              | 2 bedrooms              |                 |
|                                          |              | 3 bedrooms              |                 |
|                                          |              | 4 or more bedrooms      |                 |
| **Total**                                |              |                         |                 |

<table>
<thead>
<tr>
<th>Unit Status</th>
<th>Income Level</th>
<th>Unit Size</th>
<th>Number of Units</th>
</tr>
</thead>
</table>
| **Currently Unoccupied in Existing Development**
|                                          | Very Low     | Studio (no bedroom)     |                 |
|                                          |              | 1 bedroom               |                 |
|                                          |              | 2 bedrooms              |                 |
|                                          |              | 3 bedrooms              |                 |
|                                          |              | 4 or more bedrooms      |                 |
|                                          | Lower        | Studio (no bedroom)     |                 |
|                                          |              | 1 bedroom               |                 |
|                                          |              | 2 bedrooms              |                 |
|                                          |              | 3 bedrooms              |                 |
|                                          |              | 4 or more bedrooms      |                 |
| **Total**                                |              |                         |                 |

### GRAND TOTAL:

#### 4. Owner / Applicant Certification

I certify under penalty of perjury that the foregoing is true and correct.

Signature (Blue Ink): __________________________ Date: __________________________

Print Name: __________________________ Check One: [ ] Owner [ ] Applicant

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1 For residential developments that have been demolished, use the greatest number of units that were occupied by lower or very low income households during the five year period.

2 For existing residential developments with unoccupied units, refer to the income information for the last household in occupancy.