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ASSEMBLY BILL 323 AND ASSEMBLY BILL 1287: DENSITY BONUS AND INCLUSIONARY HOUSING

On October 11, 2023, the Governor signed Assembly Bill (AB) 323 (Holden) and Assembly Bill (AB) 1287 (Alvarez), which became effective January 1, 2024. AB 323 adds Section 714.7 in the Civil Code and amends Section 65915 of the Government Code with additional requirements pertaining to the initial sale of income-restricted units to a qualified nonprofit housing corporation. AB 1287 allows certain housing developments to receive an additional density bonus and more incentives.

A copy of the bills (Attachments A and B) is attached for your reference. This memo supersedes any conflicting provisions in the County Zoning Code (Title 22) and other previously released memos pertaining to the Density Bonus Law and shall apply until such time when Title 22 is amended.

I. INITIAL SALE OF INCOME-RESTRICTED UNITS

For income-restricted for-sale units in a project subject to the Inclusionary Housing Ordinance and/or the Density Bonus Ordinance, the initial sale shall be restricted to income-qualified households. If the units are not purchased by income-qualified households within 180 days after the issuance of the certificates of occupancy, the units may be purchased by a qualified nonprofit housing corporation pursuant to a recorded contract that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the California Revenue and Taxation Code, and that includes all of the following:

- A. A repurchase option that requires a subsequent purchaser of the property, at the time of resale, to offer the qualified nonprofit housing corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser;

- B. An equity sharing agreement;¹ and
- C. Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied units and will be sold or resold only to persons or households of very low, lower, or moderate income, as defined in Section 50052.5 of the Health and Safety Code.

For purposes of this Part I, a “qualified nonprofit housing corporation” is a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program and meets all of the following:

- A. The nonprofit corporation has a determination letter from the Internal Revenue Service affirming its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code and is not a private foundation as that term is defined in Section 509 of the Internal Revenue Code;
- B. The nonprofit corporation is based in California;
- C. All of the board members of the nonprofit corporation have their primary residence in California; and
- D. The primary activity of the nonprofit corporation is the development and preservation of affordable home ownership housing in California.

II. ADDITIONAL DENSITY BONUSES

- A. Eligibility. A housing development is eligible for an additional density bonus, subject to an Administrative Housing Permit (Section 22.166.040), if it meets all of the following:
 - 1. Set-asides. The housing development provides one of the following:
 - a. 15 percent very low-income housing set-aside;
 - b. 24 percent lower-income housing set-aside; or
 - c. 44 percent moderate-income housing set-aside if the units are for sale.

¹ If the unit is purchased or developed by a qualified nonprofit housing corporation, the County may enter into a contract in which the corporation would recapture any initial subsidy and its proportionate share of appreciation if the corporation is required to use 100 percent of the proceeds to promote homeownership for lower income households as defined by Health and Safety Code Section 50079.5 within the County jurisdiction.

2. Additional Set-asides. The housing development provides an additional very low or moderate-income housing set-aside pursuant to Table A, below. The set-aside and the additional set-aside combined shall not exceed 50 percent of the baseline dwelling units exclusive of a manager's unit or units.

B. Calculation.

1. The additional density bonus provided in Table A, below, shall be calculated using the baseline dwelling units, exclusive of a manager's unit or units.
2. The increase provided in Table A, below, shall be in addition to:
 - a. The increase in density as described in Part I.B.2 of a [memo titled "Assembly Bill 682 and Assembly Bill 2334: Density Bonus Law" dated June 15, 2023](#) if the housing development is a shared housing building development; or
 - b. The increase in density as provided in Table 22.120.050-A in [Section 22.120.050 of Title 22](#) for all other housing developments.

TABLE A: ADDITIONAL AFFORDABLE HOUSING SET-ASIDES AND DENSITY BONUSES		
Additional Set-Aside*	Very Low Income (50% AMI)	Moderate Income (120% AMI)
	Additional Density Bonus	Additional Density Bonus
5%	20%	20%
6%	23.75%	22.5%
7%	27.50%	25%
8%	31.25%	27.50%
9%	35%	30%
10%	38.75%	32.50%
11%	38.75%	35%
12%	38.75%	38.75%
13%	38.75%	42.50%
14%	38.75%	46.25%
15%-35%	38.75%	50%

* The set-aside under Part II.A.1 of this memo and the additional set-aside combined shall not exceed 50 percent of the baseline dwelling units exclusive of a manager's unit or units.

III. INCENTIVES

- A. A rental housing development shall receive up to five incentives if it provides the following:

1. At least 80 percent of all units, including the density bonus units but excluding the manager's unit or units, are for lower income households, as defined by Section 50079.5 of the Health and Safety Code (Lower Income Limit per HCD); and
 2. Up to 20 percent of all units, including the density bonus units but excluding the manager's unit or units, with rent set at an amount consistent with the maximum rent levels for lower income households, as those rents and incomes are determined by the California Tax Credit Allocation Committee (Lower Income Limit per TCAC).
- B. A housing development shall receive up to four incentives if it provides one of the following:
1. At least 16 percent affordable housing set-aside for very low-income households; or
 2. At least 45 percent affordable housing set-aside for moderate-income households if the units are for sale.

If you have any questions regarding this memo, please contact Tina Fung in the Housing Policy Section at (213) 974-6417 or tfung@planning.lacounty.gov.

DD:CC:TF:lm

Attachments:

- A. Assembly Bill 323 (Holden)
- B. Assembly Bill 1287 (Alvarez)

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