

- f) 20% of the total units for lower-income students in a student housing development; or
 - g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households.
- 3) Requires a city or county to allow an increase in density on a sliding scale from 20% to 50%, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5% to 50% over the otherwise allowable residential density.
- 4) Provides that, if permitted by a local ordinance, nothing shall be construed to prohibit a city, county or city and county from granting a density bonus greater than what is described in density bonus law for a development that meets the existing statutory requirements.
- 5) Requires the developer and the city or county to ensure one of the following:
- a) A for-sale unit that qualified the developer for the award of the density bonus is initially occupied by a person or family of the required income, offered at an affordable housing cost, as defined, and includes an equity sharing agreement, as specified.
 - b) A qualified nonprofit housing organization that is receiving the above-described welfare exemption purchases the unit pursuant to a specified recorded contract that includes an affordability restriction, an equity sharing agreement, as specified, and a repurchase option that requires a subsequent purchaser that desires to sell or convey the property to first offer the nonprofit corporation the opportunity to repurchase the property.
- 6) Establishes a welfare exemption under which property is exempt from taxation if the property is owned and operated by a nonprofit corporation that is organized and operated for the purpose of building and rehabilitating single-family or multifamily residences for sale, as provided, at cost to low-income families.

This bill:

- 1) Provides all the following regarding deed-restricted units constructed pursuant to a local inclusionary zoning ordinance:

- a) Requires a developer to offer a deed-restricted unit intended for owner-occupancy to an owner-occupant applicant unless the developer can prove that no applicants are eligible to purchase.
 - b) Establishes a civil penalty for violation of the above rule of up to \$15,000 per violation to be recovered by the county counsel or city attorney for the jurisdiction in which the violation occurred.
 - c) Requires the city, county, city and county, or local public housing authority that administers a local inclusionary zoning ordinance to provide a list of buyers eligible to purchase a deed-restricted unit starting at the time the building permit is issued until 90 days after the certificate of occupancy or final inspection is issued. The list of buyers shall include the buyer's name and contact information.
 - d) Allows a developer to sell a deed-restricted unit to a purchaser that intends to rent the units to families of extremely low (ELI), very low (VLI), low-, and moderate-income families only if there are no qualified owner-occupant buyers within the above time period.
- 2) Provides all of the following regarding deed-restricted units constructed pursuant to the state density bonus law (DBL):
- a) Requires the deed-restricted unit is sold to as well as occupied by a person or family of VLI, low-, or moderate-income, as required.
 - b) Requires that if the deed-restricted unit is purchased by a qualified nonprofit housing corporation (nonprofit), the nonprofit meet all of the following requirements:
 - i) The nonprofit has a determination letter from the IRS affirming its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code and is not a private foundation, as defined.
 - ii) The nonprofit is based in California.
 - iii) All of the board members of the nonprofit have their primary residence in California.
 - iv) The primary activity of the nonprofit is the development and preservation of affordable home ownership housing in California that includes within their contracts for initial purchase provisions relating to future repurchase, conveyance, and sale of the property.
 - c) Requires the city, county, and city and county to provide a list of buyers eligible to purchase a deed-restricted unit starting at the time the building permit is issued until 90 days after the certificate of occupancy or final inspection is issued. The list of buyers shall include the buyer's name and contact information.

- d) Allows a developer to sell a deed-restricted unit to a purchaser that intends to rent the units to families of ELI, VLI, low-, and moderate-income families only if there are no qualified owner-occupant buyers within the above time period.
- 3) Finds that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

COMMENTS:

- 1) *Author's statement.* “Displacement in our communities has become more and more frequent and I believe that with this bill, more people from our communities will be able to raise generations of their families in the communities they love and grew up in. While California has established opportunities for low-income families to realize their dream of homeownership, some investors have found a loophole that allows them to change income restricted owner-occupancy units to rental ownership instead. By closing this loophole that has disenfranchised low-income families we can further ensure our affordable housing laws are used as intended,”
- 2) *California's housing crisis.* The lack of housing in California has created a systemic and persistent housing crisis, where homeownership is out of reach to all but the most affluent, lower income households struggle to pay the rent, and homelessness is rampant. California has the largest concentration of severely unaffordable housing markets in the nation and the statewide average home value reached a new record in June 2022 at \$793,300. Recent increases in interest rates have made it much more expensive to finance a home, meaning that despite home prices decreasing, the percentage of California households that can afford to buy a home is down. Currently 18% of households in California can purchase a home, down from 25% the year prior, and far less than half of the national figure of 38%. For most families in the U.S., home equity marks the largest segment in their wealth portfolio; however, homeownership is unequally distributed by racial and ethnic lines. As a result of the severe housing shortage, millions of Californians, who are disproportionately lower-income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state don't earn enough money to meet their basic needs.

A lack of affordable housing is the biggest contributor to homelessness. As housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30%

of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness. Variation in rates of homelessness cannot be explained by variation in rates of individual factors such as poverty or mental illness, however, cities with higher rents and lower rental vacancy rates (i.e., tighter housing markets) are directly linked to higher per capita rates of homelessness.

- 3) *Inclusionary zoning*. Article XI, Section 7 of the California Constitution grants each city and county the power “to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” This is generally referred to as the police power of local governments. The Planning and Zoning Law is a general law that sets forth minimum standards for cities and counties to follow in land use regulation, but the law also establishes the Legislature’s intent to “provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters.”

Using this police power, many cities and counties have adopted ordinances, commonly called "inclusionary zoning" or "inclusionary housing" ordinances, that require developers to ensure that a certain percentage of housing units in a new development be affordable to lower-income households. These ordinances vary widely in the percentage of affordable units required, the depth of affordability required, and the options through which a developer may choose to comply. Most, if not all, of such ordinances apply to both rental and ownership housing.

Local governments may adopt inclusionary housing ordinances that require a developer to include a percentage of affordable housing on site, pay an in lieu fee to fund affordable housing elsewhere in the community, or dedicate land for affordable housing construction. DBL requires a developer to record 55-year covenants on the affordable housing units that qualify it for the density bonus. In some cases, local governments’ inclusionary housing ordinances require affordability covenants that exceed 55 years.

- 4) *Density Bonus Law (DBL)*. Given California’s high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea

of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions (hereafter referred to as incentives); waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards.

To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing. If one of these six options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a market rate developer gets density increases on a sliding scale based on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units, 20% density for 10% low-income units, and 5% additional density for moderate-income units. The maximum additional density permitted is 50% (in exchange for 15% very low-income units, 24% low-income units, and 44% moderate-income units). The developer also negotiates additional incentives and concessions, reduced parking, and design standard waivers with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

5) *Prioritizing homeownership opportunities for low-income households.*

According to the author, two density bonus projects located in Encinitas, California in 2021 contained single-family detached homes designated in their subdivision map for sale to very-low-income families making below 60% of the area median income. Instead of selling the homes to qualified families who submitted offers to purchase the homes, the developer ignored their offers, and petitioned the city to change the unit's owner occupancy designation and sold the units to corporate investors. According to the developer, there were eighty-one qualified families and two investors interested in purchasing the affordable units in their newly constructed community. The city approved the developer's request, and the corporate investor purchased the parcels at subsidized prices and depriving the low-income potential buyers of homeownership opportunities. This bill prioritizes affordable homeownership opportunities by preventing developers from selling a deed-restricted unit constructed under inclusionary zoning or DBL to an entity intending on renting the units unless a qualified owner-occupant buyer has not been identified within 90 days after completion.

6) *Double-referral*. This bill also been referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

SB 728 (Hertzberg, Chapter 365, Statutes of 2021) — authorized a qualified nonprofit housing organization to purchase a for-sale unit under density bonus law (DBL), as specified.

SB 290 (Skinner, Chapter 340, Statutes of 2021) — made various changes to DBL, including providing additional benefits to housing developments that include low-income rental and for-sale housing units, and moderate-income for-sale housing units.

AB 1505 (Bloom, Chapter 376, Statutes of 2017) — authorized the legislative body of a city or county to establish inclusionary housing requirements as a condition of development of residential units.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, June 14, 2023.)

SUPPORT:

California Association of Realtors (Sponsor)
Asian Real Estate Association of America
Habitat for Humanity California
LGBTQ+ Real Estate Alliance
Multicultural Real Estate Alliance for Urban Change
National Hispanic Organization of Real Estate Associates
Orange County Realtors
YIMBY Action

OPPOSITION:

None received.

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