LEGISLATIVE BILL 866

Introduced by Wayne, 13.
Read first time January 09, 2020
Committee: Urban Affairs

A BILL FOR AN ACT relating to cities; to adopt the Density Bonus and Inclusionary Housing Act; and to provide a duty for the Revisor of Statutes.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Density Bonus and Inclusionary Housing Act.

Sec. 2. (1) The Legislature finds and declares that:

(a) Residential density is beneficial in making better and more cost effective use of municipal resources and services;

(b) There is a need for affordable housing in the state. Affordable housing contributes to economic growth by providing housing options for workers of all levels; and

(c) Combining residential density increases and concessions or incentives with inclusionary housing encourages the efficient and effective use of land resulting in the greatest contribution to economic growth, property tax relief, and the provision of safe, decent, and affordable housing in this state.

(2) It is the intent of the Legislature that the density bonus or other concessions or incentives offered by a city pursuant to the Density Bonus and Inclusionary Housing Act shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments.

(3) The Density Bonus and Inclusionary Housing Act shall be interpreted liberally in favor of producing the maximum number of total housing units in a city.

Sec. 3. For purposes of the Density Bonus and Inclusionary Housing Act:

(1) Child care facility means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care centers;

(2) City means any city of the metropolitan class, city of the primary class, or city of the first class;

(3) Concession or incentive means any of the following:

(a) A reduction in site development standards, a modification of
zoning code requirements, or a modification of architectural design
requirements that exceed the minimum building standards approved by the
city, including, but not limited to, a reduction in setback and square
footage requirements and in the ratio of vehicular parking spaces that
would otherwise be required which results in identifiable and actual cost
reductions to provide for affordable housing costs or rents for the
targeted units to be set as specified in the Density Bonus and
Inclusionary Housing Act;

(b) Approval of mixed-use zoning in conjunction with the housing
project if commercial, office, industrial, or other land uses will reduce
the cost of the housing development and if the commercial, office,
industrial, or other land uses are generally compatible with the housing
project and the existing or planned development in the area where the
proposed housing project will be located; and

(c) Other regulatory incentives or concessions proposed by the
developer or the city that result in identifiable and actual cost
reductions to provide affordable housing costs or rents for the income
levels targeted in the Density Bonus and Inclusionary Housing Act;

(4) Density bonus means a density increase over the otherwise
maximum allowable residential density as of the date of application by
the applicant to the city or, if elected by the applicant, a lesser
percentage of density increase, including, but not limited to, no
increase in density. The amount of density increase to which the
applicant is entitled shall be as follows:

(a) For housing developments including the following percentage of
low-income units for the appropriate household size:

<table>
<thead>
<tr>
<th>Percentage of Low-Income Units</th>
<th>Percentage Density Bonus</th>
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<tbody>
<tr>
<td>10 percent</td>
<td>20 percent</td>
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<tr>
<td>15 percent</td>
<td>27.5 percent</td>
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<tr>
<td>20 percent</td>
<td>35 percent</td>
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(b) For housing developments including the following percentage of
very low-income units for the appropriate household size:

Percentage of Very Low-Income Units   Percentage Density Bonus
5 percent                           20 percent
10 percent                          27.5 percent
15 percent                          35 percent

(c) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted in and of itself, to require a comprehensive plan amendment, zoning change, variance waiver, or other discretionary approval;

(5) Development standard includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, comprehensive plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation;

(6) Housing development means a development project for four or more residential units, including mixed-use developments. The term also includes either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units in the housing development shall be on contiguous sites that are the subject of one development application but do not have to be based upon individual subdivision plats or parcels. Division only by a public street or right-of-way shall not create a noncontiguous site. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located;

(7) Low-income unit means a residential rental dwelling unit
affordable to a household earning not more than eighty percent of the income limit as set forth by the United States Department of Housing and Urban Development under its Income Limits Documentation System as such limits existed on January 1, 2020, for the county in which the unit is located and for a household size;

(8) Maximum allowable residential density means the density allowed under the zoning ordinance or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element applicable to the project; and

(9) Very low-income unit means a residential rental dwelling unit affordable to a household earning not more than sixty percent of the income limit as set forth by the United States Department of Housing and Urban Development under its Income Limits Documentation System as such limits existed on January 1, 2020, for the county in which the unit is located and for a household size.

Sec. 4. (1) When an applicant seeks a density bonus for a housing development within the jurisdiction of a city in an area that has been declared a substandard and blighted area under section 18-2109, the city council of such city shall comply with the Density Bonus and Inclusionary Housing Act. A city may adopt an ordinance that specifies how compliance with the act will be implemented. Failure to adopt such an ordinance shall not relieve a city from complying with the act.

(2) A city shall not condition the submission, review, or approval of an application pursuant to the Density Bonus and Inclusionary Housing Act on the preparation of any additional report or study that is not otherwise required by state law. Nothing in this section shall prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, concession or incentive, waiver or reduction of development standards, or waiver or reduction of parking ratios, as described in section 5 of this act.
(3) A city that has received an application for a density bonus shall expeditiously process such application, and shall issue notice and hold a public hearing on such application.

(4)(a) After receiving an application, issuing notice and holding a public hearing on such application, and finding that such application meets the requirements of the Density Bonus and Inclusionary Housing Act, a city shall grant one density bonus, the amount of which shall be as specified in section 3 of this act, and, if requested by the applicant and consistent with the act, such city shall grant concessions or incentives, waivers or reductions of development standards, and parking ratios, as described in section 5 of this act, when an applicant for a housing development seeks and agrees to construct, rehabilitate, or convert such housing development, excluding any units permitted by the density bonus awarded pursuant to the act, that will contain at least any one of the following:

(i) Ten percent of the total units in a housing development comprising low-income units; or

(ii) Five percent of the total units in a housing development comprising very low-income units.

(b) For purposes of subdivision (4)(a) of this section, total units or total dwelling units do not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) Except as provided in section 6 of this act, an applicant shall not receive more than one density bonus.

(5) An applicant shall agree to provide and the city shall ensure to protect the continued affordability of all income-restricted rental units that qualified the applicant for the density bonus for a term of at least thirty years, or for a longer period of time if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density
bonus units shall be set at an affordable rent as defined in the regulations of the United States Department of Housing and Urban Development as such regulations existed on January 1, 2020. The developer of a housing development under the Density Bonus and Inclusionary Housing Act shall record a deed restriction against the lower income units with the county register of deeds stating that such units shall remain affordable to households earning not more than the qualifying income level defined under section 3 of this act for at least thirty years from the date of approval of the density bonus.

(6) The low-income units and very low-income units shall be substantially similar in quality, number of bedrooms, and location within the housing development as all other units in the housing development.

(7) Except for concessions, incentives, and waivers or reduced parking ratios as set forth in section 5 of this act, the granting of a density bonus shall not require or be interpreted to require any waiver of or approval of similar relief from a local ordinance or provisions of a local ordinance.

(8) If a local ordinance permits, nothing in this section shall be construed to prohibit a city from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(9) Compliance with the Density Bonus and Inclusionary Housing Act shall not limit or require the provision of direct financial incentives for the housing development.

(10) The hearing prior to granting a density bonus required by this section may be combined with other public hearings required for the housing development.

Sec. 5. (1) An applicant for a density bonus pursuant to the Density Bonus and Inclusionary Housing Act may submit to the city a
proposal for the specific concessions or incentives that the applicant requests pursuant to the act. The city shall grant the concessions or incentives requested by the applicant unless the city makes a written finding, based upon clear and convincing evidence, of any of the following:

(a) The concession or incentive would have a specific, significant, adverse impact upon public health and safety; or

(b) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of concessions or incentives:

(a) One concession or incentive if at least ten percent of the total units in the project are low-income units, or at least five percent of the total units in the project are very low-income units;

(b) Two concessions or incentives if at least twenty percent of the total units in the project are low-income units, or at least ten percent of the total units in the project are very low-income units; and

(c) Three concessions or incentives if at least thirty percent of the total units in the project are low-income units, or at least fifteen percent of the total units in the project are very low-income units.

(3) The city shall bear the burden of proof for the denial of a requested concession or incentive.

(4) (a) In no case shall a city apply any development standard that will have the effect of physically precluding the construction of a development meeting the densities or with the concessions or incentives permitted by the Density Bonus and Inclusionary Housing Act. An applicant may submit to a city a proposal for a waiver or reduction of development standards that would otherwise have the effect of physically precluding the construction of a development meeting the criteria of the act at the densities or with the concessions or incentives permitted under the act.

(b) An applicant shall have a cause of action against the city for
refusing to grant a waiver or reduction of development standards in
violation of this section. In any case in which the applicant as
complainant prevails, the court may assess against the city reasonable
attorney's fees and costs of suit reasonably incurred by the complainant.

(5) A proposal for the waiver or reduction of development standards
pursuant to this section shall neither reduce nor increase the number of
concessions or incentives to which the applicant is entitled pursuant to
the Density Bonus and Inclusionary Housing Act.

(6)(a) Notwithstanding any concession or incentive granted under the
Density Bonus and Inclusionary Housing Act, upon the request of an
applicant receiving a density bonus under the act, a city shall not
require a vehicular parking ratio, inclusive of handicapped and visitor
parking, that exceeds the following ratios:

(i) One onsite parking space for zero to one bedroom;

(ii) Two onsite parking spaces for two to three bedrooms;

(iii) Two and one-half onsite parking spaces for four or more
bedrooms.

(b) If the total number of parking spaces required for a development
is other than a whole number, the number shall be rounded up to the next
whole number. For purposes of the Density Bonus and Inclusionary Housing
Act, a development may provide onsite parking through tandem parking or
uncovered parking.

(7) This section does not preclude a city from reducing or
eliminating a parking requirement for development projects of any type in
any location.

(8) A request for a parking ratio waiver or reduction shall neither
reduce nor increase the number of concessions or incentives to which the
applicant is entitled pursuant to this section.

Sec. 6. (1) When an applicant proposes to construct, rehabilitate,
or convert a housing development that conforms to the requirements of the
Density Bonus and Inclusionary Housing Act which includes a new child
care facility or commercial development that will be located on the
project premises, as part of the project, or adjacent to the project, the
city shall grant either of the following:

(a) An additional density bonus that is an amount of square feet of
residential space equal to or greater than the amount of square feet in
the child care facility or commercial development; or

(b) An additional concession or incentive that contributes
significantly to the economic feasibility of the construction,
rehabilitation, or conversion of the child care facility or commercial
development.

(2) If the development is to include a child care facility, the city
shall require, as a condition of approving the housing development, that
the following occur:

(a) The child care facility shall remain in operation for a period
of time that is as long as or longer than the period of time during which
the density bonus units are required to remain affordable pursuant to the
Density Bonus and Inclusionary Housing Act; and

(b) Of the children who attend the child care facility, the children
of very low-income households or low-income households shall equal a
percentage that is equal to or greater than the percentage of dwelling
units that are required for very low-income households or low-income
households pursuant to the Density Bonus and Inclusionary Housing Act.

(3) Notwithstanding any requirement of this subsection, a city shall
not be required to provide a density bonus or concession for a child care
facility or commercial development if it finds, based upon substantial
evidence, that the community has adequate child care facilities or
commercial development facilities.

Sec. 7. The Revisor of Statutes shall assign sections 1 to 6 of
this act to a new article in Chapter 19.