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Council File: 14-0692-S1
Council District: Citywide
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Honorable Members of the City Council
City of Los Angeles
c/o City Clerk, City Hall
200 N. Spring Street
Los Angeles, CA 90012

Attn: Richard Williams, Legislative Assistant

COUNCIL TRANSMITTAL: REPORT BACK ON THE MONITORING OF AFFORDABLE HOUSING UNITS DEVELOPED PURSUANT TO THE CITY'S DENSITY BONUS ORDINANCE (SB 1818)

SUMMARY

On May 27, 2014, a motion (Council File 14-0692-S1, Attachment 1) instructed the Los Angeles Housing + Community Investment Department (HCIDLA) to prepare a report that responds to specific topics related to the City's SB 1818 Density Bonus Ordinance and the affordable units that were produced from said Ordinance. The topics identified in the motion and HCIDLA's responses are contained herein.

RECOMMENDATION

The General Manager, HCIDLA, respectfully recommends that your office schedule this report at the next available meeting(s) of the appropriate City Council committee(s) and forward it to the City Council for review and approval immediately thereafter. The HCIDLA General Manager further recommends that the City Council, subject to the approval of the Mayor, note and file this report.

BACKGROUND AND RESPONSES

When a property owner/developer receives a land use concession pursuant to the City's Density Bonus Ordinance (SB 1818), the owner is required to set-aside a certain number of affordable housing units in exchange for these land use concessions. The Affordable Housing Covenant Agreement (Covenant), prepared and executed by HCIDLA, obligates the owner to designate a specified number and type of dwelling units for occupancy by very

low, low, or moderate income households. The Covenant process starts with the Los Angeles Department of Building and Safety (LADBS) and/or Department of City Planning (DCP) who make the determination of how many affordable housing units are to be reserved for lower and moderate income households. Based on that determination, HCIDLA prepares the draft Covenant. After the City Attorney reviews and approves the draft, it is forwarded to the owner for review and execution then mailed back to HCIDLA for signatures, execution, and recordation. The Covenants are recorded with the Los Angeles County Recorder on the property's title and run with the land, which means that despite changes in ownership, the recorded Covenants remain on title and survives foreclosure proceedings.

Topic 1: The number of SB 1818 affordable units that have been entitled and built since April 15, 2008 including a breakdown of the units by Council District, a listing of how many units are supposed to be at each affordability level (i.e. very low, lower, moderate, and workforce), and whether all units are operating at the designated affordability level.

Table 1 on the following page shows the number of SB 1818/Density Bonus covenanted properties that have completed construction and received a Certificate of Occupancy since 2008 and the number of affordable housing units contained within these properties by affordability level and Council District. The table shows that 4,668 affordable housing units have been constructed since 2008 pursuant to the City's SB 1818 Ordinance. It is important to note that 73% (3,400 of 4,668 units) are contained within affordable housing developments and 27% (1,268 of 4,668 units) are contained with market rate developments. This is important because the affordable housing developments are typically owned by experienced, mission-driven, affordable housing providers and may have federal, state, tax-credit and/or bond financing and being monitored by several agencies. Market rate property owners, by contrast, are likely to have limited experience in the provision of affordable housing and the monitoring requirements.

Out of a total portfolio of 4,668 density bonus affordable units, the HCIDLA does not have income certification records for up to 250 units. The reasons for these missing certifications are due to lack of automation in the land use system and insufficient staffing resources. These issues are described in greater detail below.

When projects receive their Certificate of Occupancy from LADBS, property owners are contractually required to notify HCIDLA when leasing will begin, and to allow department staff to certify the incomes of prospective tenants prior to leasing the affordable units. Since there is not currently an automated method by which HCIDLA is notified that LADBS has issued a Certificate of Occupancy on a Density Bonus unit, some property owners have initiated leasing affordable units without notifying HCIDLA. To prevent this, HCIDLA staff must manually check properties on the LADBS website to ascertain if a Certificate of Occupancy has been issued on Density Bonus properties. Due to staffing shortages over the past year, the department has not consistently checked for the Certificates of Occupancy. As a result, there are an estimated 138 Density Bonus affordable units that have received their Certificate of Occupancy in the past year, which may have been leased prior to tenant incomes being certified. HCIDLA is working with those property owners to certify the incomes of the new tenants.

In addition, there are approximately 112 properties containing only one or two affordable units that the HCIDLA has not monitored for tenant income and affordability. Due to staffing constraints, it was a decision of the department, to prioritize compliance monitoring on those properties with larger numbers of affordable units. During the past year, the department has begun to identify these smaller properties and contact the property owners to initiate the monitoring process going forward.

The remaining properties and affordable units are monitored and the department's records indicate that all of the monitored affordable rental units are currently operating at the designated affordability level. The Covenants require property owners to annually certify tenant incomes for the affordable units and submit to the department an annual Occupancy Summary that identifies the occupants of the affordable units, household size and income, and monthly rent. The department reviews that Occupancy Summary to determine if tenant incomes and rents are

compliant or if new tenants have moved into the property. If new tenants have moved into the property, the HCIDLA requires that their income be certified. The HCIDLA can improve this process by requiring that owners obtain income documentation from tenants on a periodic basis consistent with the federally funded affordable housing projects.

**Table 1
 Number of SB 1818 Properties and Affordable Housing Units Constructed
 Since 2008 by City Council District**

Council District	Number of SB 1818 Properties	Affordable Housing Units			
		Very Low Income	Low Income	Moderate Income	Total
1	21	16	952	16	984
2	20	23	136	1	160
3	2	1	11	0	12
4	19	128	162	1	291
5	16	32	39	0	71
6	19	46	136	20	202
7	5	75	100	0	175
8	9	6	213	14	233
9	14	361	376	23	760
10	9	1	271	0	272
11	29	79	74	0	153
12	3	4	16	0	20
13	17	15	447	1	463
14	7	101	312	0	413
15	11	11	448	0	459
Total	201	899	3.693	76	4.668

Topic 2: The number of rent-controlled units that have been demolished and replaced by SB 1818 density bonus projects containing affordable units.

Table 2 on the following page shows the number of Rent Stabilization Ordinance (RSO) properties and housing units that have been demolished since 2008 and redeveloped with SB 1818 density bonus projects containing affordable units. The table shows that since 2008, 77 RSO properties containing 1,147 dwelling units were demolished and redeveloped with new properties containing 2,150 restricted affordable housing units.

Table 2
Number of RSO Properties and Housing Units
Demolished and Replaced with SB 1818 Affordable
Housing Units

Year	Number of RSO Properties Demolished	Number of RSO Units Demolished	Number of Affordable SB 1818 Units Constructed
2008	18	380	512
2009	13	252	243
2010	13	115	447
2011	9	128	267
2012	14	172	356
2013	10	100	325
Total	77	1,147	2,150

Topic 3: The income level of the households who are occupying the SB 1818 affordable units, and explanation of how tenants or purchasers are identified, selected, and qualified for affordable units, whether there is additional information that the City can require from potential tenants to ensure that they are properly income qualified, and how this process complies with Fair Housing laws.

The vast majority of SB 1818/Density Bonus units are restricted affordable to very low and low income households. The maximum allowable household incomes vary by household size. Currently, the maximum allowable annual income for very low income households ranges from \$29,900 (1-person household) to \$42,700 (4-person household). The maximum allowable annual household income for low income households ranges from \$47,850 (1-person household) to \$68,300 (4-person household). The maximum allowable affordable rents in covenanted units vary by the number of bedrooms contained in a unit. Currently, the maximum allowable monthly rents for very low income restricted units range from \$543 (0-bedroom unit) to \$836 (4-bedroom unit). The maximum allowable monthly rents for low income restricted units range from \$652 (0-bedroom unit) to \$1006 (4-bedroom unit).

Per the Covenants, it is the obligation of the owner to market, identify, and select prospective tenants to fill all vacant restricted units, and comply with any other Federal or State laws, including Fair Housing laws. Covenants require that property owners market vacant restricted units and review the income documentation for all prospective tenants. After the owner verifies the income of the prospective tenant, they must submit this documentation to HCIDLA for certification. HCIDLA staff reviews the documents and, after certifying the income determination, the owner/manager can then move in a new tenant. During HCIDLA's review, staff also verifies that the rents or sales price do not exceed the allowable maximum rates. HCIDLA will not approve

requests for income certifications if the documentation submitted by the owner does not demonstrate the required income levels or if the rents/sales price exceed the maximums specified in the Covenant.

The documentation required by the HCIDLA to certify the household income of potential tenants is sufficient to ensure that they are properly income qualified and complies with Fair Housing laws. The challenge is to attain consistent cooperation and compliance from property owners with SB 1818 affordable units to submit each potential tenant's income documentation to the HCIDLA for review and certification prior to leasing a vacant unit. We have improved the recent versions of the SB 1818 Covenant by including penalties that require property owners to agree to pay the HCIDLA all rents received from an unqualified tenant if the property owner fails to reasonably verify a prospective tenant's eligibility prior to leasing an affordable unit. The older SB 1818 Covenants do not include such penalties and the HCIDLA must continually educate property owners and work with the City Attorney's office to attain consistent compliance.

During the affordability period, HCIDLA monitors compliance with rent and income restrictions. HCIDLA has contracted with Urban Futures Bond Administration (UFBA), to perform monitoring of restricted units. On an annual basis, UFBA contacts property owners or managers and requests an Occupancy Summary identifying the occupants of the affordable units, household size and income, and monthly rent. In addition to the Occupancy Summary, property owners are required to maintain records which verify renters' eligibility. This process can be improved by requiring that owners obtain income documentation from tenants on an annual basis consistent with the federally funded affordable housing units.

Additional recent improvements to the SB 1818 Covenant include requirements for property owner to reimburse tenants for rent overpayments. In addition, if a prospective applicant is being claimed as a dependent on their parent's tax return, the income determination takes the entire household income into account. This means that in a situation when the potential tenant is a student that is still claimed by his/her parents on their income taxes, the parents' tax returns will also be considered in the income qualification process. This process is consistent with the methodology used in HCIDLA's other affordable housing programs.

Topic 4: What regulations and policies are in place to govern the situation in which a qualified tenant becomes no longer income-qualified after moving into an SB 1818 affordable unit.

In a situation where the tenant was, at initial move-in, income-qualified and then subsequently became over-income, the unit remains restricted and the tenant is allowed to remain in the unit. Upon vacancy, the owner must re-rent that unit or a comparable unit to an income-eligible household.

Topic 5: What regulations and policies are in place to govern the situation in which a qualified purchaser is no longer income-qualified after purchasing an SB 1818 affordable unit, and whether the purchaser of an SB 1818 affordable for-sale unit can rent that unit after purchase, and if so, what rules govern that rental.

Consistent with Federal guidance on purchase assistance, the buyer of a restricted unit must only be income-qualified at the time of the purchase. If the owner sells the unit during the remaining affordability period, the Covenant specifies that they must sell to another income-qualified buyer at a price set by the City. Depending upon each specific Covenant, purchasers of an affordable for-sale unit may rent the restricted unit(s) to qualified tenants as long as the City certifies the household's income and the new rent within the stated guidelines of the existing Covenant. In addition, the SB 1818 Ordinance and current Covenant do not restrict the income of purchasers of affordable for-sale units provided that purchasers rent the units to qualified tenants at affordable rents consistent with the Covenant.

CONCLUSION

The compliance monitoring of the SB 1818 land use covenants can be challenging as oftentimes the property owners are not mission driven affordable housing providers and lack understanding or otherwise disregard the requirements of the covenants. Property owners need to be educated and trained on issues such as affirmatively marketing affordable units to attract lower and moderate income tenants and how to determine household income of applicants and maintain reporting information to demonstrate compliance with the covenants.

Many of the older SB 1818 Covenants lack remedies for non-compliance. In many Covenants, the only remedy for non-compliance is for the City Attorney to enforce compliance through court actions. In the past, when we have forwarded non-compliant covenanted properties for enforcement, the City Attorney has prepared letters to the owners and gained compliance. HCIDLA continues to improve the SB 1818 Covenant with assistance of the City Attorney's Office. Preparation of the implementing ordinance pursuant to State's new Density Bonus law (AB 2222) will provide additional opportunity for improvement.

In the meantime, with adequate resources, the HCIDLA can improve the monitoring process by working closely with LADBS to automate a system by which HCIDLA is notified of the issuance of Certificates of Occupancy in order to work with property owners to certify tenant incomes prior to leasing of the affordable units and requiring property owners to provide documentation annually of tenant incomes.

FISCAL IMPACT

There is no impact to the General Fund from this report.

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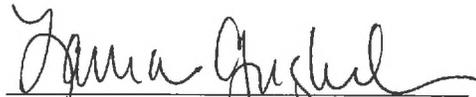
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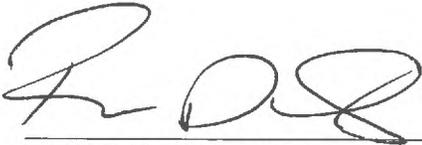
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Attachment 1 – Motion, Council File, CF 14-0692-S1

MAY 27 2014

14-0092-51

HOUSING

MOTION

The City's SB 1818 Density Bonus Ordinance (No. 179681) was enacted into law on April 15, 2008, and since that time, a number of density bonus projects have been built in the City that contain affordable units set aside for lower- and middle-income households. The overarching goal of SB 1818 and the City's Density Bonus Ordinance was to increase the availability of housing for the City's lower- and middle-income residents to ensure access to housing for those who really need it. There are, however, serious concerns that these affordable housing units are not serving their intended population. No publicly available centralized system for renting SB 1818 affordable units is maintained by the City, and there are difficulties faced in monitoring the occupancy of the SB 1818 units that exist in the City.

If our neighborhoods are going to be asked to absorb the additional density, traffic, and development impacts from density bonus projects, the City must ensure that the affordable units being produced are being operated as affordable units, are being maintained at affordable rent or sale levels, and are occupied by residents who truly qualify for the housing.

The Housing + Community Investment Department (HCID) is tasked with monitoring and administering the City's SB 1818 affordable housing stock. In order to ensure that the affordable units contained in SB 1818 density bonus projects are being properly operated, an audit of these units is necessary.

I THEREFORE MOVE that the Council instruct the Housing and Community Investment Department, in consultation with the Planning Department as necessary, to prepare a report within 90 days that analyzes and, where appropriate proposes improvements, related to the following:

1. The number of SB 1818 affordable units that have been entitled and built since April 15, 2008, including a breakdown of the units by Council District, a listing of how many units are supposed to be at each affordability level (i.e., very low, lower, moderate, and workforce), and whether all units are operating at the designated affordability level;
2. The number of rent-controlled units that have been demolished and replaced by SB 1818 density bonus projects containing affordable units;
3. The income level of the households who are occupying the SB 1818 affordable units, an explanation of how tenants or purchasers are identified, selected, and qualified for affordable units, whether there is additional information that the City can require from potential tenants to ensure that they are properly income-qualified, and how this process complies with Fair Housing laws;
4. What regulations and policies are in place to govern the situation in which a qualified tenant becomes no longer income-qualified after moving into an SB 1818 affordable unit; and

May 27 2014

12

5. What regulations and policies are in place to govern the situation in which a qualified purchaser is no longer income-qualified after purchasing an SB 1818 affordable unit, and whether the purchaser of an SB 1818 affordable for-sale unit can rent that unit after purchase, and if so, what rules govern that rental.

PRESENTED BY:


MIKE BONIN
Councilmember, 11th District


MITCH O'FARRELL
Councilmember, 13th District

SECONDED BY:


PAUL KREKORIAN
Councilmember, 2nd District

ORIGINAL