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AB-787 Planning and zoning: housing element: converted affordable housing units. (2021-2022)

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Assembly Bill No. 787

CHAPTER 350

An act to add Section 65400.2 to the Government Code, relating to housing.

[Approved by Governor September 28, 2021. Filed with Secretary of State September 28, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 787, Gabriel. Planning and zoning: housing element: converted affordable housing units.

Existing law, the Planning and Zoning Law, requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element. Existing law requires that the housing element include, among other things, an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. Existing law requires the Department of Housing and Community Development, in consultation with each council of governments, to determine each region's existing and projected housing need and requires each council of governments, or the department for cities and counties without a council of governments, to adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county, as provided.

Existing law requires the planning agency of a city or county to provide an annual report that includes specified information by April 1 of each year to specified entities, including the Department of Housing and Community Development. Among other things, existing law requires that this report include the progress in meeting the city's or county's share of regional housing needs and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing, as specified.

This bill would authorize a planning agency to include in its annual report, for up to 25% of a jurisdiction's moderate-income regional housing need allocation, the number of units in an existing multifamily building that were converted to deed-restricted rental housing for moderate-income households by the imposition of affordability covenants and restrictions for the unit, as specified. The bill would apply only to converted units that meet specified requirements, including that the rent for the unit prior to conversion was not affordable to very low, low-, or moderate-income households and the initial postconversion rent for the unit is at least 10% less than the average monthly rent charged over the 12 months prior to conversion. The bill would authorize a city or county to reduce its share of regional housing need for the income category of the converted units on a unit-for-unit basis, as specified. The bill would provide that the Department of Housing and Community Development is not required to implement the provisions of this bill until January 1, 2023. However, for reports issued after January 1, 2023, planning agencies may report conversions that occurred on or after January 1, 2022.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65400.2 is added to the Government Code, to read:

65400.2. (a) For purposes of the housing element portion of the annual report required by paragraph (2) of subdivision (a) of Section 65400, for up to 25 percent of a jurisdiction's moderate-income regional housing need allocation, the planning agency may include the number of units in an existing multifamily building that were converted to deed-restricted rental housing for moderate-income households by the imposition of affordability covenants and restrictions for the unit. The report shall clearly indicate that these were not newly constructed units, and shall provide all relevant project- and unit-level information as described in subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(b) For purposes of this section, a unit may be reported as a converted unit under subdivision (a) only if all of the following apply to the unit:

(1) The rent for the unit prior to conversion was not affordable to very low, low-, or moderate-income households.

(2) The unit is subject to a long-term recorded regulatory agreement with a public entity that requires the unit to be affordable to, and occupied by, persons of moderate income for a term of 55 years.

(3) (A) The initial postconversion rent for the unit is at least 10 percent less than the average monthly rent charged over the 12 months prior to conversion.

(B) To determine the maximum rental rate in subsequent years, the initial postconversion rent for the unit shall be compared to the rent limit at the 100-percent income level established by the California Tax Credit Allocation Committee for the year of conversion, and the regulatory agreement shall limit the rent on the unit for the term of the regulatory agreement to that ratio multiplied by the 100-percent income level rent limit for the respective year.

(C) Notwithstanding subparagraphs (A) and (B), a project owner may shift rent restrictions on units within a given property so long as the overall distribution of regulated rents remain the same.

(4) The unit is in decent, safe, and sanitary condition at the time of occupancy following the conversion.

(5) The unit was not acquired by eminent domain as part of the conversion.

(6) The unit is subject to a governmental monitoring program to ensure continued affordability and occupancy by qualifying households.

(7) Unless the development is subject to a regulatory agreement with the California Tax Credit Allocation Committee, a public entity shall hold an assignable right to purchase the development, any interest in the development, or any interest in a partnership that owns the development for a price that does not exceed the principal amount of outstanding indebtedness secured by the building and all federal, state, and local taxes attributable to that sale.

(c) For any units that qualify to be reported pursuant to this section that were converted between the start of the projection period and the deadline for adoption of the housing element, a city or county may reduce its share of the regional housing need on a unit-for-unit basis, provided that the reduction does not exceed 25 percent of the need in the moderate-income category.

(d) The Department of Housing and Community Development shall not be required to implement this section until January 1, 2023. However, for reports issued after January 1, 2023, planning agencies may report conversions pursuant to subdivision (a) that occurred on or after January 1, 2022.