

MATERIAL MODIFICATIONS TO PENDING PHILADELPHIA CITY COUNCIL COMMERCIAL REAL ESTATE - MIXED INCOME HOUSING BILL PROPOSED

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On June 22, 2017, City Councilmember Maria Quiñones-Sanchez introduced a bill proposing to provide for new affordable housing requirements in Philadelphia in the commercial real estate context. The bill, as originally drafted, would amend the Housing Code to require residential developers to include affordable housing units in their new and redeveloped residential projects. In return, developers would be rewarded with height and floor-area ratio bonuses. Since its initial introduction in June, the bill has been recently modified by its sponsor as part of the Planning Commission review process, resulting in certain substantive changes to its original form. A November 27 public hearing revealed dissension against the bill from neighborhood groups, housing advocates and developers, resulting in Councilmember Quiñones-Sánchez putting a hold on the bill. Further amendments to rectify the differing viewpoints are to be expected, and another hearing as well as a vote has been scheduled for December 5, 2017.

BACKGROUND

Legislating affordable housing requirements in the commercial/residential real estate context is not a new trend in major cities nationwide. San Francisco and New York City, for example, have long had robust mixed income housing programs. Given Philadelphia's high poverty rate, city officials view this bill as a way to provide increased affordable housing to its residents while still recognizing and meeting the needs of private developers.

THE BILL: BILL NO. 170678

The bill directs private developers of new residential projects or substantially rehabilitated projects containing more than 10 units to set aside 10 percent of the units for affordable housing. The amended bill specifies, however, that its affordable housing requirements do not apply to student or subsidized housing. Under the original bill, the affordable units would have been available to prospective renters whose incomes were between 30 percent and 50 percent of the area median income (AMI) and to purchasers between 50 percent and 80 percent of the AMI, depending on the location of the units. Now, under the amended bill, the units would be available to prospective "low income" renters at or below 50 percent of the AMI and "moderate income" renters at or below 60 percent of the AMI. The amended bill would also make the units available to prospective "low income" purchasers at or below 70 percent of the AMI and "moderate income" purchasers at or below 80 percent of the AMI.

Originally, the bill applied to the entire city; as amended, however, the bill would only affect high-density zoning districts of RM-4, RMX-3, CMX-3, CMX-4 and CMX-5. These modifications result in both the affordable housing requirements and the incentives offered being inapplicable in zoning districts other than those listed above. The bill defines an affordable unit as one whose cost—whether rental or purchase—is 30 percent or less of the applicable maximum qualifying income level. These units were initially proposed to

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remain affordable for 99 years, but the amended bill has reduced the affordability term to 50 years.

The affordable units would be required to be comparable in quality to market-rate units, with finishes and features that are at least functionally equivalent. In addition, the affordable units would be evenly spread throughout the residential buildings, and qualifying residents would have access to the same amenities as all other residents of their respective buildings.

As an incentive for providing affordable housing, the city was to grant various bonuses to developers. Under the original bill, participating developers would enjoy density bonuses, allowing them to build more units per building thereby, at least in theory, helping to minimize the cost of maintaining the additional affordable housing units. These density bonuses, though, do not appear in the amended bill. However, the amended bill has preserved the height bonuses proposed in the initial bill, whereby developers will be allowed to build higher than is currently permitted by the Housing Code. Some neighborhood groups have spoken against the height bonuses, so changes may be introduced in the next version of the bill. Finally, pursuant to the original bill, developers would be entitled to increased base maximum floor-area ratios. While the original bill set this floor area bonus at a maximum of 1.3 times the base floor-area ratio, the amended bill will allow developers to choose the bonus amount, with options ranging from 1.3 to 1.8 times the base floor-area ratio.

As an alternative option, developers who do not wish to construct affordable housing units in their residential development projects may opt instead to pay into the Philadelphia Housing Trust Fund. Payment amounts will be determined according to the size of the units constructed. Under the original bill, developers would have been required to construct at least some on-site affordable units. As amended, however, the bill offers developers the option to pay into the Philadelphia Housing Trust Fund for all units, deleting the requirement to construct any affordable units, if the developer does not wish to do so.

WHAT THIS MEANS FOR COMMERCIAL REAL ESTATE AND RESIDENTIAL PROPERTY DEVELOPMENT IN PHILADELPHIA

While the mixed income housing program has only been proposed in a bill and is not yet law, private developers should anticipate what changes may lie ahead in the residential space. They should note that the proposed affordable housing requirements would only apply to residential projects containing 10 or more dwelling units. Developers should be aware that they are not absolutely required to construct affordable housing units, and, may instead, pay the Philadelphia Housing Trust Fund. However, developers who choose to build such units must make them of roughly equivalent quality to that of their other market-rate units.

Importantly, developers of commercial real estate should recognize the significant bonuses available to

them should they opt to build affordable units. The amended bill grants substantial height and floor-area bonuses to developers who incorporate the affordable housing proposals, although the specifics of these bonuses may change in the next version of the bill. These developers will have enhanced development opportunities as a result of their assistance in providing homes to a wide range of Philadelphians.

The bill, if passed into law, would go into effect on July 1, 2018. Should it pass, the bill will not apply to construction pursuant to valid zoning permit applications that were filed prior to the effective date. Currently, a Rules Committee public meeting and the vote on the bill have been set for Tuesday, December 5, 2017.

FOR FURTHER INFORMATION

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