

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 136

Introduced by Wayne, 13.

Read first time January 11, 2019

Committee: Urban Affairs

- 1 A BILL FOR AN ACT relating to cities; to adopt the Density Bonus and
2 Inclusionary Housing Act; and to provide a duty for the Revisor of
3 Statutes.
4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Density Bonus and Inclusionary Housing Act.

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

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

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

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

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

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

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

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

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

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

31 (a) A reduction in site development standards, a modification of

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

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

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

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

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

<u>Percentage of Low-Income Units</u>	<u>Percentage Density Bonus</u>
<u>10 percent</u>	<u>20 percent</u>
<u>15 percent</u>	<u>27.5 percent</u>
<u>20 percent</u>	<u>35 percent</u>

31 (b) For housing developments including the following percentage of

1 very low-income units for the appropriate household size:

2 Percentage of Very Low-Income Units Percentage Density Bonus

3 5 percent 20 percent

4 10 percent 27.5 percent

5 15 percent 35 percent

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

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

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

31 (7) Low-income unit means a residential rental dwelling unit

1 affordable to a household earning not more than eighty percent of the
2 income limit as set forth by the United States Department of Housing and
3 Urban Development under its Income Limits Documentation System as such
4 limits existed on the effective date of this act for the county in which
5 the unit is located and for a household size;

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

10 (9) Very low-income unit means a residential rental dwelling unit
11 affordable to a household earning not more than sixty percent of the
12 income limit as set forth by the United States Department of Housing and
13 Urban Development under its Income Limits Documentation System as such
14 limits existed on the effective date of this act for the county in which
15 the unit is located and for a household size.

16 Sec. 4. (1) When an applicant seeks a density bonus for a housing
17 development within the jurisdiction of a city, the city council of such
18 city shall comply with the Density Bonus and Inclusionary Housing Act. A
19 city may adopt an ordinance that specifies how compliance with the act
20 will be implemented. Failure to adopt such an ordinance shall not relieve
21 a city from complying with the act.

22 (2) A city shall not condition the submission, review, or approval
23 of an application pursuant to the Density Bonus and Inclusionary Housing
24 Act on the preparation of any additional report or study that is not
25 otherwise required by state law. Nothing in this section shall prohibit a
26 local government from requiring an applicant to provide reasonable
27 documentation to establish eligibility for a requested density bonus,
28 concession or incentive, waiver or reduction of development standards, or
29 waiver or reduction of parking ratios, as described in section 5 of this
30 act.

31 (3) A city that has received an application for a density bonus

1 shall expeditiously process such application, and shall issue notice and
2 hold a public hearing on such application. The public hearing required
3 under this subsection may be combined with any other public hearing.

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

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

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

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

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

26 (5) An applicant shall agree to provide and the city shall ensure to
27 protect the continued affordability of all income-restricted rental units
28 that qualified the applicant for the density bonus for a term of at least
29 thirty years, or for a longer period of time if required by a
30 construction or mortgage financing assistance program, mortgage insurance
31 program, or rental subsidy program. Rents for the lower income density

1 bonus units shall be set at an affordable rent as defined in the
2 regulations of the United States Department of Housing and Urban
3 Development as such regulations existed on January 1, 2019. The developer
4 of a housing development under the Density Bonus and Inclusionary Housing
5 Act shall record a deed restriction against the lower income units with
6 the county register of deeds stating that such units shall remain
7 affordable to households earning not more than the qualifying income
8 level defined under section 3 of this act for at least thirty years from
9 the date of approval of the density bonus.

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

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

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

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

27 (10) The hearing prior to granting a density bonus required by
28 section 4 of this act may be combined with other public hearings required
29 for the housing development.

30 Sec. 5. (1) An applicant for a density bonus pursuant to the
31 Density Bonus and Inclusionary Housing Act may submit to the city a

1 proposal for the specific concessions or incentives that the applicant
2 requests pursuant to the act. The city shall grant the concessions or
3 incentives requested by the applicant unless the city makes a written
4 finding, based upon clear and convincing evidence, of any of the
5 following:

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

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

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

12 (a) One concession or incentive for projects that include at least
13 ten percent of the total units for lower income households, or at least
14 five percent for very low-income households;

15 (b) Two concessions or incentives for projects that include at least
16 twenty percent of the total units for low-income households or at least
17 ten percent for very low-income households; and

18 (c) Three concessions or incentives for projects that include at
19 least thirty percent of the total units for low-income households or at
20 least fifteen percent for very low-income households.

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

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

31 (b) An applicant shall have a cause of action against the city for

1 refusing to grant a waiver or reduction of development standards in
2 violation of this section. In any case in which the applicant as
3 complainant prevails, the court may assess against the city reasonable
4 attorney's fees and costs of suit reasonably incurred by the complainant.

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

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

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

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

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

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

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

25 (8) A request for a parking ratio waiver or reduction shall neither
26 reduce nor increase the number of concessions or incentives to which the
27 applicant is entitled pursuant to section 5 of the act.

28 Sec. 6. (1) When an applicant proposes to construct, rehabilitate,
29 or convert a housing development that conforms to the requirements of the
30 Density Bonus and Inclusionary Housing Act which includes a new child
31 care facility or commercial development that will be located on the

1 project premises, as part of the project, or adjacent to the project, the
2 city shall grant either of the following:

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

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

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

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

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

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

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