

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2522 (Bloom) – As Amended March 18, 2016

SUBJECT: Land use: attached housing developments

SUMMARY: Allows an attached housing development to be permitted as a "use by right" provided that it meets specified requirements. Specifically, **this bill:**

- 1) Defines "use by right" to mean that a local government's review of the owner-occupied or multi-family residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or constitute a "project" for the purposes of the California Environmental Quality Act (CEQA). Requires any subdivision of sites are subject to all laws including but not limited to the local Subdivision Map Act. Use by right does not exempt the use from design review. Design review does not constitute a "project" for purposes of CEQA.
- 2) Defines "attached housing development" to mean:
 - a) A newly constructed or substantially rehabilitated structure containing two or more dwelling units that is a "housing development project;"
 - b) "Housing development project" means a use consistent with any of the following:
 - i. Residential use only;
 - ii. Mixed use developments consisting of residential and nonresidential in which the nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are more than two floors. Neighborhood commercial means small-scale general or special stores that provide goods primarily to the surrounding community; or
 - iii. Transitional or supportive housing.
 - c) Does not include a second unit; and
 - d) Does not include a condominium conversion.
- 3) Requires the attached housing development to include housing for very low, low-, or moderate-income households as follows:
 - a) At least 20% of the total units must be sold or rented to lower income households making 80% of the area median income (AMI) or below; or
 - b) 100% of the units must be sold or rented to moderate income households, making between 80% to 120% of AMI or middle income households making 150% of AMI or below; and

- c) Replacement of all rental units that existed on the site where the attached housing development is constructed in the last five years that were:
 - a. Occupied by very low- or low-income households;
 - b. Restricted by a covenant or law to very low- or low-income rents;
 - c. Subject to rent control if the occupants were moderate, low- or very low-income.
- 4) Requires the attached housing development to either:
 - a) Satisfy existing exemptions within the California Environmental Quality Act (CEQA) for farmworker housing, low income housing developments, and infill sites with 100 housing units or less; or
 - b) Requires the attached housing development to:
 - i. Be located on a site that is included in the jurisdiction's housing element inventory of residential land suitable for development; or
 - ii. Be located on a site that has been or will be rezoned as required by the jurisdiction's housing element and either the rezoning has been complete or three years has passed following the date that the jurisdiction's housing element was adopted unless an extension to four years is granted because most of the rezoning was completed within the previous three years; and
 - iii. Provides that the attached housing development cannot contain more dwelling units than were projected by the jurisdiction in the housing element as well as any density bonus units that the development is eligible for; and
 - iv. Requires the attached housing development must comply with applicable general plan and zoning standards and criteria, including but not limited to design standards in effect when the attached housing development is determined to be complete; and
 - v. Requires the attached housing development to either be in an "urbanized area" or "infill site."
- 5) Defines an "urbanized area" to mean:
 - a) An incorporated city with a population of at least 100,000 or an incorporated city with a population of less than 100,000 if no more than two neighboring incorporated cities have a population of at least 100,000; or
 - b) An unincorporated area that is either completely surrounded by one or more incorporated cities and the population of the incorporated area and the population of the surrounding incorporated city or cities is not less than 100,000 and the population density of the incorporated area is at least equal to the population density of the surrounding city or cities OR an unincorporated area that is located within urban growth boundary and has an existing residential population of at least 5,000 persons per square mile; or

- c) In an census-defined place with a population density of at least 5,000 persons per square mile; or
 - d) If the development is 50 units or less within an incorporated city with a population density of at least 2,500 persons per square mile and total population of at least 25,000.
- 6) Defines an "infill site" to mean a site in an urbanized area where either:
- a) The site has not been previously developed for urban uses and both of the following apply: the site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses AND no parcel in the site has been built on within the past 10 years unless the parcel was built on as result of a redevelopment agencies plan, or
 - b) The site was previously developed for qualified urban uses.
- 7) Applies to all cities and counties including charter cities because the Legislature finds that the lack of affordable housing is of vital statewide importance and thus a statewide concern.
- 8) Operates independently of a jurisdictions obligation to identify multifamily sites developable by right in **its housing element.**
- 9) Provides that the exemptions in this bill do not apply to the Coastal Commission Act.
- 10) **Provides that an applicant or public agency must comply with the Subdivision Map Act.**
- 11) Provides that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution.

EXISTING LAW:

- 1) Defines "use by right" to mean that a local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or constitute a "project" for the purposes of the California Environmental Quality Act (CEQA) Requires any subdivision of the sites are subject to all laws including but not limited to the local Subdivision Map Act. Use by right does not exempt the use from design review. Design review does not constitute a "project" for purposes of CEQA.
- 2) The Housing Accountability Act defines housing for very low, low-, or moderate-income households to mean either:
 - a) At least 20% of the total units in a development must be sold or rented to lower income households at 80% of AMI or below (as defined in Section 50079.5 of the Health and Safety Code); or
 - b) 100% of the units in a development must be sold or rented to persons and families of moderate income between 80% to 120% of AMI (as defined in Section 50093 of the

Health and Safety Code) or to persons and families of middle income at up to 150% of AMI. (Government Code Section 65589.5)

3) The Housing Accountability Act provides that:

- a) Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30% of 60% of AMI with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based.
- b) Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30% of 100% of AMI with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

FISCAL EFFECT: Unknown.

COMMENTS:

Background: California is facing a housing affordability crisis on many fronts. According to the Public Policy Institute of California (PPIC), as of February 2015, roughly 36% of mortgaged homeowners and approximately 48% of all renters are spending more than one-third of their household incomes on housing. California continues to have the second lowest homeownership rate in the nation and the Los Angeles metropolitan area is now a majority renter region. In fact, five of the eight lowest homeownership rates in the nation are in California metropolitan areas. California has 12% of the United States population, but 20% of its homeless population – 63% of these homeless Californians are unsheltered (the highest rate in the nation). At any given time, 134,000 Californians are homeless. California has 24% of the nation's homeless veterans and one-third of the nation's chronically homeless. The state also has the largest numbers of unaccompanied homeless children and youth, with 30% of the national total.

According to a recent report by the LAO, Perspectives on Helping More Low-Income Californians Afford Housing, "local community resistance and California Environmental Quality Act (CEQA) challenges limit the amount of housing—both private and subsidized—built in California. These factors present challenges for subsidized construction and inclusionary housing programs. Subsidized housing construction faces the same, in many cases more, community opposition as market-rate housing because it often is perceived as bringing negative changes to a community's quality or character. Furthermore, subsidized construction, like other housing developments, often must undergo the state's environmental review process outlined in CEQA. This can add costs and delay to these projects. Inclusionary housing programs rely on private housing development to fund construction of affordable housing. Because of this, barriers that constrain private housing development also limit the amount of affordable housing produced by inclusionary housing programs."

By right proposal: This bill would exempt a housing development that includes either 20% low-income units or 100% moderate income units from a conditional use permit, a planned unit development permit or project level CEQA review. In order to qualify, a housing development would need to be on a site designated by the local government in its housing element, be located in an urbanized area, and be consistent with the adopted General Plan, written zoning, and design

criteria. In order to qualify for by right, the number of units in a development could not exceed the number of units that the local government had designated for the site in its housing element plus any increased density a developers receives as part of a density bonus.

The project would be exempt from a project level CEQA review; however it would be subject to CEQA review completed as part of the housing element review and adoption process. Public review is also required when a local government adopts design requirement, its General Plan, and zoning. A development that is approved by right pursuant to this bill would be subject to those reviews.

Purpose of this bill: According to the author, "AB 2522 amends Government Code Section 65589.4 to focus on building affordable and workforce housing through a market-rate solution, and to address continued strong local opposition to housing at the local level through the CEQA process. This bill is also designed to avoid further modification to or additional requirements on the housing element itself as they will have minimal positive effect on the amount of housing produced in the state. AB 2522 would require by right approval by cities and counties of any market rate multi-family rental housing project that includes at least 20% low income housing or 100% moderate income housing. The by right approval would apply to attached housing projects proposed for sites already designated by the city or county in the housing element for housing, in urban areas, and subject to consistency with written up-front General Plan, zoning and design criteria. By right approval is completed without any discretionary approval, eliminating the need for CEQA review, and is already required on any housing element sites where rezoning was required. However, public review is still required to establish design guidelines and the zoning, and subdivisions remain subject to CEQA. Substantial public review, comment and CEQA are also required during the housing element review and adoption process."

Arguments in support: According to the sponsor, the American Planning Association, California Chapter, AB 2522 is designed to get more affordable and market rate housing built by, providing greater certainty to developers who will know well before submitting a project application what is required to receive the by right approval through written, upfront General Plan, zoning and design criteria. AB 2522 respects local planning for housing because the sites where the housing would be approved by right have already been designated as housing sites in the housing element by the city or county itself, and the project must also comply with written and adopted General Plan, zoning and design criteria developed and approved by the local agency. Encourages public engagement early in the process by shifting local engagement and participation away from CEQA review at the time of project approval, the public can engage much earlier in the process during approval and adoption of the General Plan, housing element, zoning and design criteria. AB 2522 provides a clear and concrete solution that encourages the production of housing rather than additional paperwork: Additional requirements for the housing element have been passed by the Legislature nearly every year for 20 years – these requirements have not prevented a severe housing shortage. Further detailed requirements for housing elements will have minimal positive effects on the amount of housing produced in the state. The emphasis now must be on increasing the production of housing at all affordability levels.

Arguments in opposition: According to the League of California Cities,

Staff comments:

The committee may wish to consider if it makes sense to exempt jurisdictions who are successfully building affordable housing from the provisions of this bill.

Committee amendments:

Amend 65589.4 (b) as follows:

(b) The attached housing development provides both of the following:

(1) "Housing for very low, low or moderate income households" as defined in paragraph (3) of subdivision (h) of Section 65589.5; and *or*

(2) Replacement housing units as required by paragraph (3) of subdivision (c) of Section 65915, *whichever provides the greater amount of lower income housing.*

The jurisdiction shall require the developer of the attached housing development to provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low households for a period of at least 55 years and for moderate-income households for a period of at least 45 years.

Technical amendment:

Page 3, line 22, delete "element" and replace with "development"

REGISTERED SUPPORT / OPPOSITION:**Support**

American Planning Association, California Chapter (sponsor)
California Association of Realtors
California Building Industry Association
California Housing Consortium

Opposition

Council of Community Housing Organizations
League of California Cities

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