

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2176 (Campos) – As Amended April 19, 2016

**SUBJECT:** Shelter crisis: declaration: public facilities

**SUMMARY:** Authorizes the City of San Jose to operate a transitional housing community for homeless persons during a declared shelter crisis. Specifically, **this bill:**

- 1) Defines “transitional housing community” to mean any facilities reserved for homeless persons and families that are located on property leased or owned by a political subdivision, including temporary housing structures, such as camping cabins or recreational vehicles.
- 2) Requires a transitional housing community to:
  - a) Include supportive and self-sufficiency development services;
  - b) Have the ultimate goal of moving homeless persons to permanent housing as quickly as reasonably possible; and
  - c) Limit rents and service fees to an ability-to-pay formula reasonably consistent with the United States Department of Housing and Urban Development’s requirements for subsidized housing for low-income persons.
- 3) Provides that the following apply during a shelter crisis declared by the City of San Jose:
  - a) Emergency housing may include a transitional housing community for the homeless located or constructed on any city-owned or city-leased land, including land acquired with low- and moderate-income redevelopment housing funds.
  - b) The city may, in lieu of state and local building, housing, health, habitability, or safety standards and laws, enact local standards for transitional housing communities to be operative during the shelter crisis consistent with ensuring minimal public health and safety.
  - c) During the shelter crisis, provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of building, housing, health, habitability, or safety shall be suspended for the transitional housing communities provided that the City has adopted health and safety standards for transitional housing communities and those standards are complied with.
  - d) Landlord tenant laws codified in Civil Code Sections 1941 to 1942.5, inclusive, providing a cause of action for habitability or tenantability, shall be suspended for the transitional housing communities provided that the city has adopted health and safety standards for transitional housing communities and those standards are complied with.
  - e) Provisions b-d above apply only to a public facility or a transitional housing community reserved for the homeless pursuant to this chapter.

- 4) Exempts a transitional housing community, as defined, from the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), and the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code).
- 5) Exempts a transitional housing community that complies with the applicable requirements of the Americans with Disabilities Act of 1990 (Public Law 101-336), as amended by ADA Amendments Act of 2008 (Public Law 110-325), from Part 2.5 (commencing with Section 54) of Division 1 of the Civil Code and actions thereunder for the duration of the shelter crisis.
- 6) Provides that these provisions remain in effect only until January 1, 2022.

**EXISTING LAW:**

- 1) Defines “declaration of a shelter crisis” to mean the duly proclaimed existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety.
- 2) Defines “political subdivision” to include the state, any city, city and county, county, special district, or school district or public agency authorized by law.
- 3) Defines a “governing body” to include:
  - a) The Governor.
  - b) The legislative body for a city or city and county.
  - c) The board of supervisors for a county.
  - d) The governing board or board of trustees for a district or other public agency.
  - e) An official designated by ordinance or resolution adopted by an entity referenced in b-d above.
- 4) Defines “public facility” to mean any facility of a political subdivision including parks, schools, and vacant or underutilized facilities which are owned, operated, leased, or maintained, or any combination thereof, by the political subdivision through money derived by taxation or assessment.
- 5) Authorizes a governing body to declare a shelter crisis.
- 6) Authorizes political subdivision, upon declaration of a shelter crisis, to allow persons unable to obtain housing to occupy designated public facilities during the duration of the state of emergency.
- 7) Provides during a shelter crisis a political subdivision is immune from liability for ordinary negligence in the provision of emergency housing.

- 8) Restricts the limitation of liability only to conditions, acts, or omissions directly related to, and which would not occur but for, the provision of emergency housing; and does not limit liability for grossly negligent, reckless, or intentional conduct which causes injury.
- 9) Suspends the provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis.

**FISCAL EFFECT:** None.

**COMMENTS:**

The Shelter Crisis Act, allows a jurisdiction to declare a shelter crisis, and provides that upon such declaration the jurisdiction's liability for the provision of emergency housing is limited. It also provides that the jurisdiction may allow homeless persons to occupy designated public facilities for the duration of the crisis. Further, the act suspends state and local housing, health, and safety standards for public facilities to the extent full compliance would hamper mitigation of the effects of the shelter crisis.

Emergency housing is typically provided as shelter beds allowing for an overnight stay. According to the supporters, because the Shelter Crisis Act does not address protection from habitability rules and their impact on landlord tenant law, a jurisdiction would potentially incur liability in providing anything beyond transient shelter beds in facilities designated under the Act. AB 2176 would allow the City of San Jose to establish a transitional housing community, as defined, and enact local standards for a transitional housing community in lieu of state and local laws and standards.

Purpose of the bill: According to the author: "AB 2178 would authorize the City of San Jose to prepare local building, housing, health, habitability, or safety standards, in lieu of such state laws, for the development of a transitional housing community. In doing so, AB 2178 would provide the City of San Jose the necessary tools for it to try new and innovative ways to provide housing now, while new permanent supportive housing, which can be years in the making, can be financed and constructed."

Arguments in support: According to the Non-Profit Housing Association: "The County of Santa Clara and City of San Jose have been working on the idea of developing a transitional housing village with onsite supportive services and a mission to transition the formerly homeless to appropriate permanent housing as soon as it can be made available. This important legislation will allow this humane and innovative approach to go forward and provide housing now while allowing time for new permanent supportive housing to be financed and constructed."

Staff comments: The City of San Jose's Affordable Housing Investment Plan states that since the 1980's, the city has created 18,000 units of affordable rental units. However, there are still nearly 4,000 homeless individuals currently in need of housing within the city. The author and the City believe that small, minimalist housing units, sometimes referred to as "tiny homes", may provide a temporary solution as more permanent housing comes on line.

Tiny homes are typically less than 400 square feet, with some as small as 80 square feet. These units often do not have running water, electricity or sewer connections. Instead, communal facilities provide for these and other basic services typically required by state and local building

standards. The minimalist design of these structures has been reported to provide significant time and cost savings. Opportunity Village, a tiny home community housing homeless persons in Eugene, OR, reports that whereas a traditional federally funded housing unit may cost \$200,000 to construct, they were able to build a total of 30 tiny homes for less than half that amount.

Providing tiny home communities for unsheltered homeless persons is an innovative, cutting edge approach to addressing homelessness. The City of San Jose would be among a very short list of jurisdictions in the country trying this solution, thus it is understandable that the City would like a certain degree of flexibility as they develop and implement this novel program. However, some stakeholders have expressed concerns that the temporary housing community proposed by AB 2176 may become a permanent, substandard housing situation if care is not taken, given the wide array of existing health, safety, and habitability standards the bill would waive. Providing a mechanism for state oversight, specifying the maximum amount of time a resident may reside in the community, and requiring that services be provide on-site may help to address some of these concerns.

The term “transitional housing” has specific connotations with respect to state and federal housing programs. Given the novel nature of the program AB 2176 would create, it may be helpful to refer to the community by a different name.

The City currently manages a \$750 million multifamily loan portfolio which provides \$6.5 million in residual receipts annual that is available for additional affordable housing investments. The City’s Affordable Housing Investment Plan identifies several additional funding streams and a variety of affordable housing projects in various stages of development. The City argues that while they have a robust pipeline of projects that will come online in the next several years, there is an immediate need for a solution to its current homelessness crisis. AB 2176 authorizes the City of San Jose to address this crisis through the construction and operation of transitional housing community for homeless persons.

To address stakeholder concerns and strengthen the policy provisions within the bill, the committee may wish to consider the following:

- 1) Replace the name “transitional housing community” with “emergency housing community”.
- 2) Require each resident be matched with an affordable housing unit identified in the City’s housing plan.
- 3) Require the duration of a given resident’s stay be limited to 24 months.
- 4) Require the City develop a plan for the community that includes on-site supportive services.
- 5) Require the City report to the Legislature annually the number of residents in the community, number of residents who have moved into permanent housing, and the average time required for a resident to receive a permanent housing unit.
- 6) Encourage the author to consider an alternative mechanism for HCD to permit a transitional housing community project, such as through the Specialty Occupancy Parks permitting process, with a presumption that such a permit is approved if no response is received within a specified time period.

- 7) Page 2, line 25 after “means any” insert “new or existing”
- 8) Page 2, line 26 after “including” insert “but not limited to”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

City of San Jose  
Non-Profit Housing Association of Northern California

**Opposition**

None on File

**Analysis Prepared by:** Ken Spence / H. & C.D. / (916) 319-2085, Ken Spence / H. & C.D. / (961) 319-2085