

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2666 (Boerner Horvath) – As Amended May 11, 2020

SUBJECT: Starter Home Revitalization Act of 2020

SUMMARY: Facilitates small lot single-home development. Specifically, **this bill:**

- 1) Allows a development to qualify as a small home lot development, if all of the following apply:
 - a) The proposed development is located on a lot zoned for multi-family residential development that is no larger than five acres and substantially surrounded by qualified urban uses;
 - b) The development proponent proposes to construct single-family housing units on fee simple ownership lots;
 - c) The residential properties within a radius of 500 feet of the site are zoned to have an allowable residential density of 20 units per acre or fewer;
 - d) The proposed development will divide the multi-family site into no fewer or more parcels than any general plan or zoning minimum or maximum identified for the site;
 - e) The site complies with the existing site front, side, and rear setback requirements;
 - f) The proposed units comply with existing height limits, if applicable;
 - g) The total area of floorspace for each unit does not exceed 1,600 net habitable square feet;
 - h) The development complies with any local inclusionary housing ordinances adopted by the local agency, if applicable; and
 - i) The development of a project on that site does not require the demolition or alteration of any of the following types of housing:
 - i. Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
 - ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;
 - iii. Housing occupied by tenants within the seven years preceding the date of the application, including housing that has been demolished or that tenants have vacated before the application for a development permit; and

- iv. A parcel or parcels on which an owner of residential real property has exercised their rights to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
- 2) Provides a process for subdivision of the small home lots, including that:
 - a) The subdivision is exempt from the requirements of the Subdivision Map Act except for those provided in the bill;
 - b) A development proponent of a small home lot development shall submit a map that meets the Subdivision Map Act's provisions for a final map;
 - c) The city or county cannot require a development proponent to comply with any public hearing or other discretionary approval requirement regarding the subdivision of the site; and
 - d) A city that processes a map pursuant to these requirements must subsequently transmit the map to the county in the manner otherwise undertaken for a final map.
 - 3) A local agency cannot impose any of the following requirements on a small home lot development:
 - a) A setback requirement between the units, except as required in any local building code;
 - b) A minimum requirement on the size of an individual small home lot created by the development; and
 - c) A requirement to provide enclosed or covered parking beyond that allowed by state density bonus law, unless the development is located within one-half mile of a major transit stop, in which case the local agency cannot impose a parking requirement that exceeds 0.5 spaces per unit.
 - 4) Enables a local agency to adopt policies, procedures, or other provisions regarding the creation of small home lot developments that are less restrictive to allow the creation of more units.
 - 5) Finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, the changes made by this act applies to all cities, including a charter city or a charter city and county.
 - 6) Provides that no reimbursement is required by this Act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this Act.

EXISTING LAW:

- 1) Planning and Zoning Law Requires every city and county to adopt a general plan, and requires the general plan to include seven mandatory elements, including a land use element,

and requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans (Government Code Sections 65000 through 66301) .

- 2) Provides, pursuant to the Subdivision Map Act (Government Code Section 66410 through 66499.38), the following related to the subdivision of land:
 - a) Requires a city or county to require approve the division of any unit land or any portion thereof, for the purpose of sale, lease, or financing, whether immediate or future, as follows:
 - i. Requires the approval of tentative and a final map for all subdivisions of land creating five or more parcels, except for subdivisions which meets specified conditions; or
 - ii. Requires the approval of a parcel map for subdivisions of land creating four or fewer parcel, while allowing a city or county to require a tentative map for the parcel map;
 - b) Requires a legislative body of a city or county to deny approval of a tentative map or a parcel map if it makes any of the following findings:
 - i) That the proposed map is not consistent with applicable general and specific plans;
 - ii) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans;
 - iii) That the site is not physically suitable for the type of development;
 - iv) That the site is not physically suitable for the proposed density of development;
 - v) That the design of the subdivision or the proposed improvements are likely to cause environmental damage, injure wildlife, or are likely to cause serious public health problems; or,
 - vi) That the design of the subdivision or the type of improvements will conflict with certain easements providing access through or use of property within the proposed subdivision.
 - c) Requires the completion and recordation of a final map upon compliance with the conditions of the tentative map.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "While home ownership options have traditionally been limited to single-family homes on 5,000 square foot lots or as attached condominiums, the passage of a statewide Small Lot Subdivision authorization will create more entry-level home ownership opportunities, and add as an option another type of housing that is currently missing in our state's housing supply."

Background:

Planning and Zoning Law: Planning and approving new housing is mainly a local responsibility. The California Constitution allows every city and county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority.

State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities and counties major land use decisions – including most zoning ordinances and other aspects of development permitting including subdivisions of land – must be consistent with their general plans.

The Subdivision Map Act: The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land, which generally requires a subdivider to submit, and have approved by the city or county in which the land is situated, a tentative map. Cities and counties approve tentative maps that are consistent with their general plans, and typically attach numerous conditions that must be met before a final map can be approved. Once subdividers comply with those conditions, local officials must issue final maps. Approving tentative maps is a discretionary action, and therefore subject to the California Environmental Quality Act (CEQA). However, once the conditions of a tentative map are met, a final map is typically approved ministerially.

Purpose of this Bill: This bill would enable the subdivision of lots zoned for multifamily housing into smaller lots for single-family homes. It seeks to facilitate a higher density of smaller homes to incent the creation of “starter homes” designed for ownership at more affordable prices than might be found on the surrounding single-family homes. This bill does so by removing the ability for local agencies to require setbacks requirement between the units (except as required in any local building code), establish a minimum home size, or require enclosed or covered parking beyond that allowed by state density bonus law. This bill also establishes minimum densities (based on the local general plan) and maximum home sizes. Development using the provisions of this bill would be limited to sites surrounded by single family or other lower density housing in an attempt to ensure that this provision only applies to sites where single-family housing is the prevailing character. This bill includes displacement prevention measures to ensure that the creation of these starter homes that promote homeownership are not created at the expense of existing tenants.

This bill would create a streamlined pathway for applicable projects to navigate the Subdivision Map Act. Foremost, it would remove a city’s or county’s discretion on whether or not to approve the subdivision and prohibit any public hearing on the action. It would also allow the developer to bypass the tentative map process, and skip directly to the final map.

Arguments in Support: Arguments in support of the bill are focused on the bill’s ability to facilitate moderate income home-ownership units. According to the California Association of Realtors, “AB 2666 will encourage the construction of new affordable owner occupied housing

units state wide that will be available to our states working families who struggle to afford housing within the communities in which they work.”

Arguments in Opposition: Arguments in opposition include that it facilitates the loss of sites appropriate for affordable housing. According to the Western Center on Law and Poverty, “AB 2666 undermines ... improvements to long-standing housing policy. The bill would allow a city to designate land in its housing element for multi-family housing to meet the needs of low-income households, while it is simultaneously anticipating or encouraging that those same sites be developed as for-sale housing for moderate and above-moderate income households. The two policies cannot be reconciled.”

Additional arguments in opposition include concerns that the bill would provide a streamlined process without providing benefits such as affordable housing or labor standards. According to the District Council of Iron Workers of the State of California, “AB 2666 would improperly constrain local agency land use authority and would permanently exempt these developments from critical health and environmental protections, without providing a single guaranteed unit of affordable housing.”

Staff Comments: The bill would enable sites that are zoned for multi-family housing to be subdivided into single-family lots, which are likely to be developed for moderate- and above-moderate income households. Often, multi-family sites are identified in the local jurisdiction’s housing element site inventory as being appropriate for low- and very-low income housing. The “no net loss” requirements under Planning and Zoning Law (Government Code Section 65863.2(b)) require that a local jurisdiction must, at all times, have sufficient sites in their inventory to meet the regional housing needs allocation at all income levels. Because projects being developed pursuant to this bill will likely be taken out of the stock of potential sites for affordable housing, local officials and other interested parties should be sure to understand that such projects may therefore require rezoning elsewhere in their jurisdiction. **As such, the committee may wish to consider amending the bill to include a reference stating that this bill is subject to the no net loss provisions in Government Code Section 65863.2(b)).**

The bill enables local jurisdictions to “adopt policies, procedures, or other provisions applicable to the creation of a small home lot development that are less restrictive and allow for the creation of more housing units than are allowed by the requirements of this section.” In this instance, the term “are less restrictive” is vague and may be subject to interpretation that is counter to the intent of the bill. **The committee may wish to consider amending the bill to strike the phrase “are less restrictive.”**

This bill would substantially amend the subdivision map process by removing local discretion to approve the subdivision. By removing the local discretion, the bill would remove a trigger for undertaking analysis under the California Environmental Quality Act (CEQA). The bill does not remove the ability for the approval of the housing itself to be discretionary, and thus subject to CEQA. However, the resulting development would be single-family homes. If they were built individually, each home could benefit from the existing CEQA exemption for such development.

This bill would also expedite the subdivision mapping process by creating a single-step process that is reliant upon the final map. Given the more substantive nature of the tentative map (for larger subdivisions) and parcel map (for smaller subdivisions), the author should consider a process that is more reliant on those maps than the more perfunctory and ministerial final map.

It should be noted that, after several years without substantial revision, this year there are two other bills this year that are also proposing to amend the Subdivision Map Act – AB 3155 (Robert Rivas) and AB 3234 (Gloria). Should all three bills move out of their respective policy committees, an effort should be made to help rectify any policy discrepancies. Additionally, each bill deals with small lot infill developers, reflecting the potential need for a larger restructuring of the Subdivision Map Act to better facilitate the infill housing needed to address the state’s housing crisis.

Committee Amendments: The committee may wish to consider amending the bill as follows to address the concerns outlined above:

- Cross reference the no net loss provisions in Government Code Section 65863.2(b));
- Strike the term “are less restrictive” from the sentence controlling the ability of local jurisdictions to allow more density than is allowed in the bill.

Related Legislation:

AB 3135 (Robert Rivas) (2020): This bill would facilitate the ministerial, streamlined approval of developments of ten units or fewer, including the streamlined approved of the tentative map. This bill is pending hearing in this Committee.

AB 3234 (Gloria) (2020): This bill would enable jurisdictions to have a simplified subdivision mapping process for small lot subdivisions. This bill is pending hearing in the Assembly Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors
California Building Industry Association
California Community Builders
California YIMBY
Casita Coalition
Facebook
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Foundation
5 Individuals

Support If Amended

Non-Profit Housing Association of Northern California

Opposition

California State Association of Electrical Workers
California State Pipe Trades Council

District Council of Iron Workers of The State of California and Vicinity
International Union of Elevator Constructors, Local 18
International Union of Elevator Constructors, Local 8
International Union of Operating Engineers, Cal-Nevada Conference
State Building and Construction Trades Council of California
Western States Council Sheet Metal, Air, Rail and Transportation

Oppose Unless Amended

California Rural Legal Assistance Foundation
Western Center on Law & Poverty

Analysis Prepared by: Steve Wertheim / H. & C.D. / (916) 319-2085