Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 744 (Caballero) – As Amended April 29, 2019

SENATE VOTE: 34-2

SUBJECT: Planning and zoning: California Environmental Quality Act: permanent supportive housing

SUMMARY: Makes changes to the existing streamlined process for supportive housing developments and creates an expedited review of California Environmental Quality Act (CEQA) challenges for housing developments receiving No Place Like Home (NPLH) funding. Specifically, **this bill**:

1) Defines "objective zoning standards and policies" and "objective design review standards" as standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external or uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal, as specified.

2) Provides that the local government may embody objective development standards and objective design standards in alternative objective land use specifications adopted by the local government that may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, as specified.

3) Prohibits a local government from adopting an ordinance that requires a project that qualifies as a use by right be subject to design review unless both of the following criteria are met:

    a) The design review is objective and strictly focused on assessing compliance with criteria required for supportive housing developments, as well as any reasonable objective design standards published and adopted by the local government before submission of a development application; and

    b) The local government applies those objective design review standards broadly to development within the local government's jurisdiction.

4) Provides that a local government may require a supportive housing development subject to this article to comply with written, objective development standards and policies. The local government shall only require the development to comply with the objective development standards and policies that apply to other multifamily development within the same zone.

5) States that any policy to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" for purposes of CEQA.

6) States that this bill does not preclude a local government from imposing fees and exactions otherwise authorized by law. Prohibits a local government from adopting any requirement,

including but not limited to increased fees that apply to a project solely or partially on the basis that the project constitutes a supportive housing development or based on the developments eligibility to receive streamlined review.

7) States that a decision by a local government to seek funding from the Department of Housing and Community Development from the No Place Like Home (NPLH) program shall not constitute a "project" for the purposes of CEQA.

8) States that where a NPLH project does not qualify as a use by right, the lead agency shall prepare and certify the record of proceeding for the environmental review project, as specified.

9) Requires that if a NPLH project qualifies as a use by right, the local agency shall file and post the notice, as specified.

10) Provides that Rules 3.2220 to 3.2237 of the California Rules of Court shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of an environmental review document for a NPLH project or the granting of any approval for that project, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. On or before September 1, 2020, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this section.

EXISTING LAW:

1) Requires supportive housing to be a use by right in zones where multifamily and mixed uses are permitted, including in non-residential zones permitting multifamily uses, if the proposed housing development satisfies all of the following requirements:

    a) Units within the development are subject to a recorded affordability restriction for 55 years;

    b) One hundred percent of the units, excluding manager's units, within the development are dedicated to lower-income households and are receiving public funding to ensure affordability of the housing to lower-income Californians;

    c) At least 25% of the units in the development or 12 units, whichever is greater, are restricted to residents in supportive housing. Requires, if the development consists of fewer than 15 units, then 100% of the units, excluding managers' units, in the development shall be restricted to residents in supportive housing;

    d) Nonresidential floor area shall be used for onsite supportive services in the following amounts:

        i) For a development with 20 or fewer total units, at least 90 square feet shall be provided for onsite supportive services;

        ii) For a development with more than 20 units, at least 3% of the total nonresidential floor area shall be provided for onsite supportive services that are limited to tenant

use, including, but not limited to, community rooms, case management offices, computer rooms, and community kitchens;

e) The developer replaces any pre-existing dwelling units on the site of the supportive housing development, as provided.

2) Provides that in a city or the unincorporated area of the county where the population is 200,000 or less and the homeless population based on the annual point-in-time count is 1,500 or less, use by right applies to developments of 50 units or less. A city or county meeting this description may adopt a policy to approve developments by right above 50 units.

3) Allows a local government to require a supportive housing development to comply with objective, written development standards and policies; provided, however, that the development shall only be subject to the objective standards and policies that apply to other multifamily development within the same zone.

4) Requires a developer of supportive housing to provide the planning agency with a plan for providing supportive services, with documentation demonstrating that supportive services will be provided onsite to residents in the project, and describing those services, as specified.

5) Requires the local government to approve a supportive housing development that complies with the requirements of this bill.

6) Prohibits the local government from imposing any minimum parking requirements for the units occupied by supportive housing residents, if the supportive housing development is located within 0.5 miles of a public transit stop.

7) Defines the following terms:

a) "Supportive housing" to mean housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

b) "Supportive services" to include, but are not limited to, a combination of subsidized, permanent housing, intensive case management, medical and mental health care, substance abuse treatment, employment services, and benefits advocacy.

c) "Use by right" to mean the local government's review of the owner-occupied or multifamily residential use that may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of the California Environmental Quality Act (CEQA), as specified.

FISCAL EFFECT: Unknown.

COMMENTS:

Purpose of the bill. According to the author, "California is in a state of emergency with a growing population of homeless individuals who are living with a serious mental illness. In 2018, voters across the state recognized this crisis and widely supported Proposition 2, which allows for $2 billion to fund supportive housing for those suffering with mental illness. Given this charge, the state must do all that we can to ensure counties are able to build permanent supportive housing units as quickly as possible. This bill responds to the California voters' sense of urgency about the need to build and provide services using the housing first model."

Homelessness in California: California is facing a homelessness and affordable housing crisis. In 2018, on a single night in January, 129,972 people experienced homelessness in California. California has twenty-four percent of the people in the nation experiencing homelessness. Nearly half of all unsheltered people in the country were in California. Although the number of people experiencing homelessness decreased slightly since 2017, the overall number of people experiencing homelessness has risen over five percent since 2010.

The homeless crisis is driven by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the six million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.

Streamlining for Supportive Housing: Last year, AB 2162 (Chiu), Chapter 753, Statues of 2018, created a streamlined process for supportive housing developments. Local governments cannot apply a conditional use permit or other discretionary approvals to 100% affordable developments that include a percentage of supportive housing units, either 25% of the units or 12 units whichever is greater, on sites that are zoned for residential use. Developments must include facilities and onsite services for residents of the supportive housing units. In addition, developers must provide the local government the name of the service provider, staffing levels, and funding sources for the services. Local governments can apply objective and quantifiable design standards to a development and would need to notify a developer within 30 days if the project application is complete and within 60 days if the project met the requirements for streamlining. Since the bill passed, the author's office has learned of several developments using the streamlined process.

Changes to AB 2162: AB 2162 allows a local government to apply written and objective development standards to a supportive housing project using the streamlined process. This bill would add a definition for objective standards and design review standards as those that require no personal judgement and are verifiable. This bill also specifies that the objective standards and design review standards can be found in a variety of places -- housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances. In addition, this bill specifies that a development is entitled to the maximum density allowed in a land use designation.

No Place Like Home: In 2016, California voters approved Proposition 2: "No Place Like Home." No Place Like Home made $2 billion in bond funds available to counties for efforts to assist people who are experiencing homelessness and suffering from a serious mental illness find stable housing and treatment through the construction and operation of supportive housing. The

Department of Housing and Community Development awarded the first funding for NPLH earlier this month.

This bill would create an expedited CEQA review process for supportive housing developments that receive NPLH funding and do not quality for AB 2162. SB 744 requires an action or proceeding relating to a NPLH project to commence within 30 days of the local agency filing a NOD if the project is subject to CEQA or within 30 days of the public agency's decision to carry out or approve the project if the project is not subject to CEQA (approved as a use by right). The court is required to review a challenge to the EIR within 270 days of the filing of the challenge.

Arguments in support: According to the sponsor of this bill, "Proposition 2 received substantial support amongst voters last November and enables the state to distribute $2 billion to fund the "No Place Like Home" initiative. SB 744 will accelerate the siting process for the over 20,000 housing units pledged by NPLH to secure this voter mandate. This bill would be a humane and effective solution to ending homelessness in California by requiring local governments to authorize these supportive housing projects. SB 744 will streamline the supportive housing project review processes which will allow for a quicker dispersal of NPLH funds. The bill would impose a state-mandated program and deem the NPLH out of bounds of the California Environmental Quality Act's (CEQA) jurisdiction given California's state of emergency."

Arguments in opposition: According to the Judicial Council of California, "It is important to note that the Judicial Council's concerns regarding SB 744 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the projects covered by the legislation, as those issues are outside the council 's purview. SB 744's requirement that any CEQA lawsuit challenging specified supported housing projects, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1 (a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline on top of the existing preference is arbitrary and likely to be unworkable in practice. Second, the expedited judicial review for all of the projects covered by SB 744 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding this particular type of case has the practical effect of pushing other cases on the courts' dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide.

Finally, providing expedited judicial review for all of the projects covered by SB 744 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this particular type of case for such preferential treatment is fundamentally at odds with how our justice system has historically functioned."

Committee amendments:

1) Technical amends clarifying provisions of AB 2162 (Chiu)

    a) Clarify that a development is eligible if has <u>or will</u> receive public funding.

b) Clarify that a developer that uses the streamlined process is entitled to all of the benefits under density bonus law including a density bonus, concessions and incentives, and a reduction in development standards.

2) Revise the CEQA exemption below to apply to any city our county that adopts a by right policy not just those cities and counties described in 65651 (d):

~~*A policy to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.*~~ *A policy by any city or county to approve as a use by right proposed housing developments with a limit higher than 50 units, or in addition to those allowed by subdivision (a), does not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.*

3) Delete the following sections of the bill that are redundant of either existing law or the new bill language:

(2) Any discretion exercised by a local government in determining whether a project qualifies as a use by right pursuant to this article or discretion otherwise exercised pursuant to Section 65651 does not affect that local government's determination that a supportive housing development qualifies as a use by right pursuant to this article.

(2) The local government's review of a supportive housing development to determine whether the development complies with objective development standards pursuant to this subdivision shall be conducted consistent with the requirements of subdivision (f) of Section 65589.5.

Double referred: This bill was also referred to the Assembly Committee on Natural Resources where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Steinberg Institute (Sponsor)
Alameda County Board of Supervisors
Ca Behavioral Health Planning Council
California Apartment Association
Disability Rights California
Mental Health America of Los Angeles

Opposition

California Judges Association
Judicial Council of California

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