

Date of Hearing: June 22, 2021

**ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT**

David Chiu, Chair

SB 10 (Wiener) – As Amended June 14, 2021

**SENATE VOTE:** 27-7

**SUBJECT:** Planning and zoning: housing development: density

**SUMMARY:** Authorizes a city or county to pass an ordinance that is not subject to the California Environmental Quality Act (CEQA) to upzone any parcel for up to ten units of residential density if the parcel is located in a transit-rich area or an urban infill site.

Specifically, **this bill:**

- 1) Authorizes a city or county to pass an ordinance to zone any parcel for up to ten units of residential density, notwithstanding any local or voter-mandated restrictions on zoning ordinances, as long as the parcel meets the following geographic parameters:
  - a) The parcel is located in either:
    - i) A transit-rich area, defined to mean a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor, as defined; or
    - ii) An urban infill site, which is a site that satisfies all of the following:
      - (1) Location in a city if the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster;
      - (2) At least 75 percent of the perimeter adjoins parcels that are developed with urban uses; and
      - (3) Zoning for residential use or residential mixed-use, or a general plan designation that allows residential use or a mix of residential and non-residential uses, with at least two-thirds of the square footage of the development designated for residential use.
  - b) The parcel is not located in a high or very high fire hazard severity zone, except for sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
- 2) Requires a local agency that adopts an ordinance to rezone sites up to ten units pursuant to this bill to do all of the following:
  - a) Specify the allowed building height on affected parcels;
  - b) Include a declaration that the zoning is adopted, as specified;
  - c) Clearly demarcate the areas that are zoned, as specified; and

- d) Make a finding that the increased density is consistent with the city's obligation to affirmatively further fair housing.
- 3) Specifies that neither an ordinance adopted pursuant to this bill, nor any resolution, ordinance or any other local regulation adopted to amend the jurisdiction's general plan to be consistent with that ordinance, is a project for purposes of CEQA.
- 4) Specifies, regarding housing development projects on sites rezoned pursuant to this bill that are of more than ten units, the following:
  - a) Such projects are prohibited from receiving ministerial or by right approval, or being exempt from CEQA, if it the parcel on which it is located was rezoned using the provisions of this bill;
  - b) A project may not be divided into smaller projects in order to produce more than ten units;
  - c) The creation of up to two ADUs or JADUs does not count towards the ten unit cap on total units; and
  - d) These provisions do not apply if the site is subsequently rezoned without regard to this bill. However, the subsequent rezoning will be subject to CEQA, and the environmental review must be based on the zoning applicable before they were zoned pursuant to this bill.
- 5) Prohibits a local government from utilizing this bill to reduce the density of parcels, or subsequently reducing the density of any parcels upzoned pursuant to this bill.
- 6) Provides that any covenant, restriction, or condition contained in any instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document is void and unenforceable if it unreasonably restricts a use or density authorized by an ordinance authorized by this bill.
- 7) Includes a sunset date such that a local government cannot pass an ordinance discussed in 1) after January 1, 2029. Specifies that the ordinances themselves may extend beyond that date.
- 8) Provides that the Legislature finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

**EXISTING LAW:**

- 1) Allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws" (California Constitution, Article XI, Section 7).
- 2) Establishes Planning and Zoning Law, which requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the 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 Section 65000 through 66301).

- 3) Establishes Housing Element law, which determines, through the regional housing needs allocation (RHNA) process, each jurisdiction's fair share of housing, and provides that each city and county must produce, and HCD certify, a housing element that convey how the jurisdiction will help fulfill the state's housing goals (Government Code Section 65580 through 65589.11).
- 4) Establishes the California Environmental Quality Act (CEQA), which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government (Public Resources Code Section 21000 et seq).
- 5) Establishes the Davis-Stirling Common Interest Development Act which provides rules and regulations governing the operation of residential common interest developments and the rights and responsibilities of homeowners associations (HOAs) and HOA members. (Civil Code Section 4000 *et seq.*)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**Author's Statement:** According to the author, "California's massive housing shortage is driving people into poverty and homelessness and threatening our environment, economy, and diversity. SB 10 provides cities with a powerful, fast, and effective tool to allow light-touch density exactly where it should be: near jobs, near public transportation, and in existing urbanized areas. Specifically, SB 10 allows cities, if they choose, to rezone these non-sprawl location for up to ten-unit buildings in a streamlined way without CEQA. Given that cities face significantly increased housing production goals under the revised Regional Housing Needs Assessment (RHNA) and are required by the state Housing Element Law to complete rezonings to accommodate these goals, SB 10 is a powerful new tool for cities to use in their comprehensive planning efforts. SB 10 will help ease California's housing crisis, spurred by a statewide shortage of 3.5 million homes, and move the state away from a sprawl-based housing policy and toward a more sustainable, equitable, and effective housing policy."

**California Housing Crisis:** California is in the midst of a housing crisis. Only 27 percent of households can afford to purchase the median priced single-family home – 50 percent less than the national average. Over half of renters, and 80 percent of low-income renters, are rent-burdened, meaning they pay over 30 percent of their income towards rent. At last count, there were over 160,000 homeless Californians. The burden of this crisis is disproportionately born by communities of color; according to HCD's 2018 Statewide Housing Assessment, Black and Latinx households are one-third less likely to own a home as White households, and 20 percent more likely to be rent-burdened.

A major cause of our housing crisis is the mismatch between the supply and demand for housing. According to the Roadmap Home 2030 (Housing CA and California Housing Partnership

Corporation, 2021), to address this mismatch, California needs approximately 2.6 million units of housing, including 1.2 million units affordable to lower income households. And according to HCD, the state needs 180,000 units of housing built a year to keep up with demand. By contrast, production in the past decade has been under 100,000 units per year, further exacerbating the housing crisis.

***Planning for and Approving Housing Development:*** Planning for and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties 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. Cities and counties enforce this power through zoning regulations that restrict and shape development, such as maximum densities of housing units, maximum heights, minimum numbers of required parking spaces, required setbacks, and maximum lot coverage ratios. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

The state’s role in housing production is to ensure that cities and counties plan for and approve new housing. Cities and counties are required to complete a housing element as part of their General Plan. Among other things, the housing element must demonstrate how the community can accommodate its share of its region’s housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element.

***Moderate-Density Housing:*** As discussed above, a major cause of our housing crisis is the mismatch between the supply and demand for housing. This mismatch involves not just the amount of housing, but the type of housing being built. In recent decades, almost all of the housing built in California was large single-family development (which can be an inefficient use of land) and mid- and high-rise construction (which are expensive to build). One strategy to lower the cost of housing is to facilitate the construction of housing types that accommodate more units per acre, but are not inherently expensive to build. This includes moderate-density typologies such as town homes, duplexes, and four-plexes,

Local zoning restrictions are a barrier to denser housing. According to the UC Berkeley Turner Center’s 2019 residential land use survey in California from August 2017 to October 2018, most jurisdictions devote the majority of their land to single-family zoning and in two-thirds of jurisdictions, multifamily housing is allowed on less than 25 percent of land. Many local governments in California are motivated to increase density in these neighborhoods to address the housing crisis, and others are required by state law to do this as part of their Housing Element. However, such upzonings typically face several impediments – one of which is the requirement for the upzoning to be analyzed under CEQA.

New housing typically requires multiple levels of CEQA review, including at the housing element level, for a rezoning that increases development capacity, and for the project itself. This bill would remove the requirement to complete CEQA review when jurisdictions rezone to increase the amount of housing allowed, up to a maximum of ten units, on parcels that are either

infill locations and/or near high quality transit. The jurisdiction's decision to utilize the provisions of this bill are voluntary. However, if a jurisdiction decides to do so, this bill enables elected officials to override voter initiatives that have restricted the zoning on these parcels.

Parcels upzoned pursuant to the bill cannot be both greater than ten units and benefit from by right approval or a CEQA exemption. This provision could make it more difficult to build projects than under existing law in the instances where a developer could already have built more than ten units on a parcel upzoned by this bill, such as when they assemble multiple parcels or utilize a density bonus. For example, under existing law, supportive housing developments can use a by right process to avoid CEQA review (AB 2162 (Chiu) Chapter 753, Statutes of 2018) and may qualify for additional density that would produce more than ten units (AB 1763 (Chiu), Chapter 666, Statutes of 2019). The Legislature established these benefits to expedite the production of much needed affordable housing units.

***Homeowners Associations and Zoning:*** Planned developments are a type of common interest developments for housing with separate ownership of housing units that also share common areas and amenities. Planned developments are regulated under the Davis-Stirling Act (Civil Code Section 4000 *et seq.*) as well as the governing documents of the homeowners association (HOA), including the bylaws, declaration, and operating rules. Planned developments can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county recorder at the time they are established. Owners in a planned developments are contractually obligated to abide by the CC&Rs and the governing documents of the planned development, which specify the rules such as how an owner can modify their home. This may include increasing the number of units on the parcel, in spite of local zoning controls that may allow more units.

This bill would override any provisions of the planned development's governing documents and CC&Rs if those provisions would prohibit or unreasonably restrict a use or density authorized by an ordinance adopted pursuant to this bill.

***Arguments in Support:*** Supporters of the bill include organizations that support new housing development. They argue that the bill would maintain local control while helping cities address the state's housing shortage and affiliated burdens on lower income households. According to California YIMBY, the sponsor of the bill, "SB 10 creates a path to adding modest density to address California's housing shortage, preserves significant local control for local jurisdictions, and makes it faster, less expensive, and less risky for a city to undertake a community process to increase density in our communities."

***Arguments in Opposition:*** Opponents of the bill include HOAs and community groups who argue that its provisions would override the will of local voters and HOAs, and that new housing would not reduce the cost of housing. Opponents also include cities who are concerned that nearby cities will allow more housing without studying the implications to traffic in adjacent cities. According to the City of Beverly Hills, "While this measure seeks to address California's housing crisis by providing local governments with an additional tool to increase housing production in their jurisdictions, it fails to ensure local governments are not able to overturn the democratic will of their residents." Opponents also include environmental justice organizations who are concerned that bypassing CEQA, when combined with project-specific exemptions, could result in housing being built on toxic or polluted land.

**Committee Amendments:** At the request of the author, the Committee may wish to consider striking Section 1 of the bill, which would override any provisions of the planned development's governing documents and CC&Rs if those provisions would prohibit or unreasonably restrict a use or density authorized by an ordinance adopted pursuant to this bill.

Additionally, at the request of the author, the Committee may wish to consider narrowing the ability for a city or county to pass an ordinance pursuant to this bill that may conflict with voter-mandated restrictions on zoning ordinances:

- Remove the ability to pass such an ordinance if the voter initiative designates publicly owned land for open space, park, or recreational purposes; and
- Require a two-thirds vote of the local government to pass such ordinances.

***Related Legislation:***

SB 902 (Wiener), 2020: Substantially similar to this bill. Held on the Assembly Appropriations Committee's Suspense File last year.

SB 478 (Wiener), 2021: Would establish a minimum floor-to-area ratio (FAR) standard on housing development projects of three to ten units, and override any provisions of HOAs that are in conflict. This bill is pending hearing in this Committee.

AB 1322 (R Rivas), 2021: This bill would enable cities to override local voter initiatives that preclude the ability of the jurisdiction to plan for housing required by RHNA.

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California YIMBY (Sponsor)  
AARP  
Abundant Housing LA  
ActiveSVG  
All Home  
American Planning Association, California Chapter  
Association of Bay Area Governments  
Bay Area Council  
Bridge Housing Corporation  
California Apartment Association  
California Asian Pacific Chamber of Commerce  
California Association of Realtors  
California Community Builders  
California Community Economic Development Association  
California Hispanic Chamber of Commerce  
California Rental Housing Association  
California State Association of Electrical Workers

California State Pipe Trades Council  
CBIA  
Central City Association of Los Angeles  
Chan Zuckerberg Initiative  
Circulate San Diego  
City of Oakland, Libby Schaaf, Mayor  
Council of Infill Builders  
County of Monterey  
East Bay for Everyone  
Facebook, INC.  
Fieldstead and Company, INC.  
Fresno Metro Black Chamber of Commerce  
Generation Housing  
Gilroy City Council Member Office, Councilmember Zack Hilton  
Greenbelt Alliance  
Habitat for Humanity California  
Hollywood Chamber of Commerce  
Housing Action Coalition  
International Union of Elevator Constructors  
League of Women Voters of California  
LISC San Diego  
Livable Sunnyvale  
Local Government Commission  
Los Angeles Business Council  
Los Feliz Neighborhood Council  
Metropolitan Transportation Commission  
Mountain View YIMBY  
Non-profit Housing Association of Northern California  
North Bay Leadership Council  
Northern Neighbors  
Peninsula for Everyone  
People for Housing - Orange County  
San Fernando Valley YIMBY  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
San Francisco Bay Area Rapid Transit District (BART)  
San Francisco YIMBY  
Santa Barbara Women's Political Committee  
Santa Cruz YIMBY  
Schneider Electric  
Silicon Valley Community Foundation  
Silicon Valley Leadership Group  
South Bay YIMBY  
South Pasadena Residents for Responsible Growth  
Southwest California Legislative Council  
Streets for People Bay Area  
SV@Home  
TechEquity Collaborative  
The Two Hundred  
TMG Partners

United Way Bay Area  
United Way of Greater Los Angeles  
Urban Environmentalists  
Valley Industry and Commerce Association (VICA)  
Western States Council Sheet Metal, Air, Rail and Transportation  
YIMBY Action  
YIMBY Democrats of San Diego County  
Zillow Group

*Support If Amended*

Southern California Association of Governments (SCAG)

**Opposition**

A Better Way Forward to House California  
Adams Hill Neighborhood Association  
Alameda Citizens Task Force  
Albany Neighbors United  
Allied Neighborhoods Association (of Santa Barbara)  
Berkeley Associated Neighbors Against Non-affordable Housing  
Berkeley Flatlanders Group  
Betterment of California  
Blue Dove Neighborhood  
Brentwood Homeowners Association  
Burton Valley Neighborhoods Group  
California Alliance of Local Electeds  
California Cities for Local Control  
Camarillo; City of  
Catalysts  
California Environmental Justice Alliance  
Center for Biological Diversity  
Center on Race, Poverty & the Environment  
Citizens Preserving Venice  
City of Beverly Hills  
City of Hidden Hills  
City of Jurupa Valley  
City of Lafayette  
City of Lomita  
City of Newport Beach  
City of Orange  
City of Palos Verdes Estates  
City of Pleasanton  
City of Rancho Palos Verdes  
City of Redondo Beach  
City of Rolling Hills  
City of San Dimas  
City of Santa Monica  
City of Yorba Linda



Coalition for San Francisco Neighborhoods  
College Terrace Residents Association, CTRA, Palo Alto, California, 94306  
Committee to Save the Hollywoodland Specific Plan  
Communities for a Better Environment  
Comstock Hills Homeowners Association  
Cow Hollow Association  
Crescenta Highlands Neighborhood Association  
Crescenta Valley Community Association  
Cupertino; City of  
Durand Ridge United  
El Segundo, City of  
Encinitas Neighbors Coalition  
Federation of Hillside and Canyon Associations  
Grayburn Quality of Life Preservation  
Hollywood Knolls Community Club  
Hollywoodland Homeowners Association, United Neighborhoods  
Homeowners of Encino  
Huntington Beach; City of  
IBEW Local Union 569  
Indivisible 43  
Indivisible California Green Team  
Indivisible Marin  
Indivisible Normal Heights  
Indivisible Ross Valley  
Indivisible San Jose  
International Brotherhood of Electrical Workers, Local 18  
International Brotherhood of Electrical Workers, Local 595  
LA Brea Hancock Homeowners Association  
Lafayette Homeowners Council  
Lakewood Village Neighborhood Association  
Las Virgenes-Malibu Council of Governments  
Latino Alliance for Community Engagement  
Linda Vista-Annandale Association  
Los Feliz Improvement Association  
Miracle Mile Residential Association  
Miraloma Park Improvement Club  
Mission Street Neighbors  
Neighborhood Council Sustainability Alliance Trees Committee  
Livable California  
NOMA  
Northeast Neighbors of Santa Monica  
Palo Alto; City of  
Physicians for Social Responsibility - Los Angeles  
Planning Association for the Richmond  
People Organizing to Demand Environmental and Economic Rights  
Progressive Democrats of America  
Progressive Democrats of Santa Monica Mountains  
Resident Information Resource of Santa Monica  
Residents of 47th Avenue

Riviera Estates Association  
Riviera Homeowners Association  
Rooted in Resistance  
Santa Monica Coalition for a Livable City (SMCLC)  
Save Lafayette  
Save Our Single Family Neighborhoods  
Seaside Neighborhood Association  
Shadow Hills Property Owners Association  
Sherman Oaks Homeowners Association  
Sierra Club  
SoCal 350  
South Bay Cities Council of Governments  
South Shores Community Association  
Southshores Homeowners Association, Member  
Southwood Homeowners Association  
Southwood Riviera Neighborhood Association  
State Building and Construction Trades Council of Ca  
Sunnyvale United Neighbors  
Sunset-Parkside Education and Action Committee (SPEAK)  
Sustainable TamAlmonte  
Sutro Ave Block Club (NORTH)  
Tamalpais Design Review Board  
Telegraph Hill Dwellers  
Temecula Valley Neighborhood Coalition  
Torrance; City of  
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville  
Verdugo Woodlands West Homeowners Association  
West Pasadena Residents' Association  
West Torrance Homeowners Association  
West Wood Highlands Neighborhood Association  
Westside Regional Alliance of Councils  
Westwood Hills Property Owners Association  
Westwood Homeowners Association  
Westwood South of Santa Monica Blvd. Homeowners Association  
Wilshire Montana Neighborhood Coalition  
Windsor Square Association  
3 Individuals

*Oppose Unless Amended*

AIDS Healthcare Foundation  
California Housing Consortium  
California Housing Partnership Corporation  
California Land Title Association  
City of Agoura Hills  
Housing California  
Orange County Council of Governments