

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 478 (Wiener) – As Amended May 20, 2021

SENATE VOTE: 29-5

SUBJECT: Planning and Zoning Law: housing development projects

SUMMARY: Establishes minimum floor-to-area ratio (FAR) standards on housing development projects of three to ten units. Specifically, **this bill:**

- 1) Prohibits a local government from requiring the following for housing development projects:
 - a) For a housing development project consisting of three to seven units, imposing an FAR standard that is less than 1.0;
 - b) For a housing development project consisting of eight to ten units, imposing an FAR standard that is less than 1.25; and
 - c) For a housing development project consisting of three to ten units, denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency's requirements for minimum lot size.
- 2) Requires the housing development project to meet all of the following conditions to be eligible for the standards in 1):
 - a) The project contains at least three but no more than ten units;
 - b) The project is located in a multifamily residential zone or a mixed-use zone, and is not located in either of the following:
 - i) Within a single-family zone; or
 - ii) Within a historic district or property included in the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
 - c) The project is located on a legal parcel or parcels in one of the following:
 - i) A city whose city boundaries include some portion of either an urbanized area or urban cluster; or
 - ii) An unincorporated area, and the parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster.
- 3) Prohibits a local government from imposing the following on a housing development project that meets the conditions in 2):

- a) FAR standards that expressly conflict with those outlined in 1); and
 - b) A lot coverage requirement that precludes the project from achieving the FAR allowed in 1).
- 4) Requires the Department of Housing and Community Development (HCD) to notify a local government, and allows HCD to notify the state Attorney General, if the local government is in violation of the requirements in this bill.
 - 5) Declares void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document of a homeowner's association, if it effectively prohibits or unreasonably restricts an eligible housing development project from using the FAR standards under the bill.
 - 6) Provides that the Legislature finds and declares that:
 - a) Missing middle housing is naturally affordable, and therefore, the development of missing middle 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, the changes proposed in 1) through 4) apply to all cities, including charter cities.
 - b) Ensuring the adequate production of affordable housing is a matter of statewide concern and that the changes proposed in 5) serve a significant and legitimate public purpose by eliminating potential restrictions that could inhibit the production of affordable housing.

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 housing 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 that the Legislature finds and declares that:
 - a) There exists a severe shortage of affordable housing, especially for persons and families of low and moderate income;
 - b) That there is an immediate need to encourage the development of new housing; and
 - c) The costs of new housing developments have been increased, in part, by the existing permit process and by existing land use regulations and that vitally needed housing developments have been halted or rendered infeasible despite the benefits to the public

health, safety, and welfare of those developments and despite the absence of adverse environmental impacts (Government Code Section 65913).

- 4) Requires the Department of Housing and Community Development (HCD) to notify a local government, and may notify the state Attorney General, if the local government is in violation of provisions of housing element law, the Housing Accountability Act, and Density Bonus Law.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "SB 478 ensures that local and state housing laws are not undermined by hyper-restrictive zoning requirements that make it practically impossible to build multi-family buildings in areas zoned to allow them. Specifically, SB 478 sets minimum standards on floor area ratios (FAR) for land already zoned for 3-10 buildings, commonly known as missing middle housing. Excessively low FAR and lot coverage requirements, coupled with large minimum lot sizes, are tools that numerous cities use to undermine their own zoned density — in other words, a city can zone for multi-family, but extreme FAR or lot size requirements make it effectively impossible, both financially and design-wise, to actually build. In fact, with these abusive requirements on the books, multi-family buildings are so infeasible, the end result is the development of a large single family home instead. As a result, cities are able to use this loophole to prohibit multi-family housing otherwise authorized by local or state zoning law, and only build single family homes. SB 478 will be an effective tool to combat our housing shortage by ensuring there is truth in zoning, by allowing the development of 3-10 unit buildings in places already approved for them."

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.

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. This includes 1.2 million units that are affordable to Californians making less than 80 percent of the Area Median Income. 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.

Local Planning and Approval of Housing: While local governments do not build housing, they have an outsized role in housing production. They must include plans and programs in their General Plan's housing element to facilitate housing production at all income levels. They are responsible for providing sufficient land to meet the demand for residential development, as determined through the state's Regional Housing Needs Allocation (RHNA). And they are responsible for reviewing and approving housing projects, while ensuring that any conditions they apply to the approval do not make it economically infeasible to build the housing.

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, maximum lot coverage ratios, and maximum floor area ratios. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Moderate-Density Housing: One of the reasons that housing in California is too expensive is the type of housing that is being built. Almost all of the housing built in the state since the mid-twentieth-century is 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 moderate-density housing types that accommodate more units per acre, but are not inherently expensive to build. This includes typologies such as town homes, duplexes, and four-plexes. Such units are more likely to be affordable to moderate-income households that cannot afford typical market-rate homes, but that earn too much income to qualify to receive publicly-subsidized affordable housing.

Floor-to-Area-Ratios (FAR): The FAR is city planning term of art that represents the size of a building divided by the size of the lot. FARs are one of the many standards local agencies use to control the “bulk” of new structures; other common standards include maximum building height, required setbacks, and maximum lot coverage. Each of these approaches can limit the amount of housing that can be built on a lot, even when the zoning would otherwise permit it. For example, a FAR of 0.3 (which the author identified in several zoning codes in the Bay Area) would limit housing on a 5,000 square foot lot to 1,500 square feet – essentially precluding more than one or two units from being developed, even if the zoning allowed for more.

This bill seeks to increase the production of medium-density housing by removing low “floor-to-area” ratios (FAR) as a barrier to development. It would do so by establishing a minimum FAR of 1.0 for a housing development project consisting of three to seven units, and 1.25 for a housing development project consisting of eight to ten units. These requirements would only apply on sites that are not zoned for single family, are not in historic districts, and are within or proximal to existing urban areas. To ensure the effectiveness of these controls, this bill precludes local agencies from imposing zoning or design standards that expressly conflict with these FAR minimums, or imposing a lot coverage requirement that precludes the project from achieving these FAR minimums.

Minimum Lot Size: Cities and counties typically specify the minimum size that a parcel, or “lot,” must be for housing to be built on it. Such minimum lot sizes are another way local agencies may preclude housing development, in spite of the permitted zoning. This bill would preclude a local government from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency’s requirements for minimum lot size. The lot size provisions of this bill would only apply

to sites that are not zoned for single family, are not in historic districts, and are within or proximal to existing urban areas.

Implementation and Enforcement: This bill contains two strategies to facilitate its implementation and enforcement. First, it overrides the ability of a homeowners association to enforce rules that effectively prohibit an eligible housing development project from using the FAR standards under the bill. Second, this bill would add its provisions to the list of housing laws that the Attorney General is empowered to enforce. The current list was created by AB 72 (Santiago, Chiu, Chapter 370, Statutes of 2017). The list already includes enforcement of housing element law, as well as enforcement of the Housing Accountability Act, “No Net Loss” provisions requiring local governments to ensure adequate sites for housing to be available at all times for each income levels, Density Bonus Law, and prohibitions on housing discrimination.

Arguments in Support: Supporters of the bill argue that it is necessary to ensure that housing can be developed at the density that local governments have already planned for. According to California YIMBY (the bill’s sponsor), “this bill would not require local governments to allow multifamily housing where they do not allow it. It also does not change other standards, such as height or setbacks. It just puts important guardrails on design standards so that housing that is planned for is not undermined by hyper-restrictive design rules.”

Arguments in Opposition: Opponents of the bill argue that it would undermine local control for planning. For example, according to the City of Huntington Beach, “this bill is another attempt to usurp local control and dictate how local jurisdictions should address their issues.”

Committee Amendments: The committee may wish to consider a technical amendment to revise the findings included in the bill to align with past bills by stating that the Legislature finds and declares that the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, is a matter of statewide concern.

Related Legislation:

SB 10 (Wiener) (2021): Would allow local agencies to zone certain parcels for up to 10 units per parcel, regardless of local initiatives and without having to comply with the California Environmental Quality Act. This bill is pending hearing in this Committee.

AB 725 (Wicks), Chapter 193, Statutes of 2020: Require metropolitan and suburban jurisdictions, through their housing element process, to ensure that more land is zoned for medium-density housing typologies.

AB 3155 (Robert Rivas): Would have amended the housing project approval process, created by SB 35 in 2107, and facilitated the development of medium-density housing projects of ten or fewer units. This bill died in the Assembly Committee on Appropriations.

AB 72 (Santiago, Chiu), Chapter 370, Statutes of 2017: This bill gives HCD authority to find a local government's housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.

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)
Abundant Housing LA
All Home
Bay Area Council
California Apartment Association
California Building Industry Association
Chan Zuckerberg Initiative
Circulate San Diego
East Bay for Everyone
Fieldstead and Company, INC.
Generation Housing
Greenbelt Alliance
Habitat for Humanity California
Housing Action Coalition
LISC San Diego
Long Beach YIMBY
Mountain View YIMBY
Non-profit Housing Association of Northern California
North Bay Leadership Council
San Fernando Valley YIMBY
San Francisco Bay Area Planning and Research Association (SPUR)
Santa Cruz YIMBY
Terner Center for Housing Innovation at the University of California, Berkeley
YIMBY Action

Support If Amended

Oakland Firesafe Council

Opposition

Alameda Citizens Task Force
Albany Neighbors United
California Cities for Local Control
California Labor Federation, AFL-CIO
California State Council of Laborers
California Teamsters Public Affairs Council
Catalysts
Century Glen HOA
Citizens Preserving Venice
City of Cupertino

City of Huntington Beach
City of Laguna Niguel
City of Pleasanton
City of Torrance
Franklin Corridor Coalition
Grayburn Avenue Block Club
Hollywoodland Homeowners Association, United Neighborhoods
Homeowners of Encino
Indivisible Ca-43
Indivisible California Green Team
Indivisible Marin
Indivisible Normal Heights
Indivisible Ross Valley
Indivisible San Jose
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
International Association of Heat and Frost Insulators and Allied Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Union of Bricklayers and Allied Craftworkers
International Union of Elevator Constructors
International Union of Operating Engineers
International Union of Painter and Allied Trades AFL-CIO
Latino Alliance for Community Engagement
Miracle Mile Residential Association
Mission Street Neighbors
Livable California
Northwest Glendale Homeowners Association
Operative Plasterers & Cement Masons
Progressive Democrats of America
Progressive Democrats of Santa Monica Mountains
Riviera Homeowners Association
Rooted in Resistance
Save Our Single Family Neighborhoods
Sheet Metal Workers' International Association
Sherman Oaks Homeowners Association
SoCal 350
South Shores Community Association
State Building and Construction Trades Council of Ca
Sustainable TamAlmonte
Tamalpais Design Review Board
United Association
United Brotherhood of Carpenters and Joiners of America
United Union of Roofers, Waterproofers & Allied Workers
Verdugo Woodlands West Homeowners Association

Oppose Unless Amended

California Association of Realtors

California Land Title Association
California State Association of Counties
Orange County Council of Governments
Urban Counties of California

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