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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2019 - 2020 Regular**

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**Bill No:** SB 899 **Hearing Date:** 5/26/2020  
**Author:** Wiener  
**Version:** 5/18/2020 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Erin Riches

**SUBJECT:** Planning and zoning: housing development: higher education institutions, nonprofit hospitals, or religious institutions

**DIGEST:** This bill provides that housing is a use by right on land owned by a religious institution, nonprofit hospital, or nonprofit college, as specified.

**ANALYSIS:**

*Existing law:*

- 1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 2) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.
- 3) Provides that supportive housing, in which 100% of units are dedicated to low-income households (up to 80% AMI) and are receiving public funding to ensure affordability, shall be a use by right in all zones where multifamily and mixed uses are allowed, as specified.
- 4) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.

- 5) Requires the housing element to identify adequate sites for housing and to make adequate provision for the existing and projected needs of all economic segments of the community.

**This bill, as proposed to be amended:**

- 1) Provides that housing is a use by right on land owned by a religious institution, nonprofit hospital, or nonprofit college in single-family zones, as follows:
  - a) The development project shall be allowed a density of at least 35 dwelling units per acre and a height of no more than 36 feet. If the jurisdiction currently allows for higher residential density or building height on the parcel or the adjacent parcel, the higher density and height shall apply.
  - b) The development project is located on a site that is one-quarter acre or greater.
  - c) All residential units in the development project, exclusive of any manager unit or units, must be restricted to households with an average income of 80% AMI or lower, but not above 120% AMI, for at least 55 years for rental units and at least 45 years for owner-occupied units. The rent or sales price for the unit must be at least 20% below market rate for a unit of similar size and bedroom count in the same neighborhood. The applicant shall provide the city or county with evidence that the units meet these requirements.
  - d) A locality may restrict the development project to lower-income households for longer periods than those designated in (c) if such restrictions are consistent with all applicable regulatory requirements for state assistance. A religious institution, nonprofit hospital, nonprofit college, or qualified developer may restrict all units, exclusive of manager units, to 80% AMI or lower.
  - e) The development project must comply with all objective development standards of the city or county. A city or county shall not require the project to comply with an objective development standard that would preclude the development from achieving a density of 35 dwelling units per acre or a height of less than 36 feet.
  - f) Any demolition of existing residential dwelling units in relation to the project must comply with existing statutory anti-demolition protections.
- 2) Provides that housing is a use by right on land owned by a religious institution, nonprofit hospital, or nonprofit college in residential, mixed-use, institutional, or commercial zones, as follows:
  - a) The site shall allow a density of at least 50 dwelling units per acre and a height up to 55 feet. If the jurisdiction currently allows for higher residential

- density or building heights on the parcel or on the adjacent parcel, the higher densities and heights shall apply.
- b) The development project is located on a site that is one-quarter acre or greater.
  - c) All residential units in the development project, exclusive of any manager unit or units, must be restricted to households with an average income of 80% AMI or lower, but not above 120% AMI, for at least 55 years for rental units and at least 45 years for owner-occupied units. The rent or sales price for the unit must be at least 20% below market rate for a unit of similar size and bedroom count in the same neighborhood. The applicant shall provide the city or county with evidence that the units meet these requirements.
  - d) A locality may restrict the development project to lower-income households for longer periods than those designated in (c) if such restrictions are consistent with all applicable regulatory requirements for state assistance. A religious institution, nonprofit hospital, nonprofit college, or qualified developer may restrict all units, exclusive of manager units, to 80% AMI or lower.
  - e) The development project complies with all objective development standards of the city or county. A city or county shall not require the project to comply with an objective development standard that would preclude the development from achieving a density of 50 dwelling units per acre or a height of less than 55 feet.
  - f) Any demolition of existing residential dwelling units in relation to the project must comply with existing statutory anti-demolition protections.
- 3) Requires an applicant religious institution, nonprofit hospital, or nonprofit college to partner with a developer to construct a housing development project and request approval of that project as a use by right. Defines a developer as a local public entity or a nonprofit corporation, as specified.
  - 4) Provides that a housing development project that is eligible as a use by right under this bill shall be eligible for a density bonus or other incentives or concessions.
  - 5) Provides that a housing development project that is eligible as a use by right under this bill may include ancillary uses, provided those uses are limited to the ground floor of the development.
  - 6) Prohibits a city or county from requiring more than 0.5 parking spaces per unit for a housing development project meeting the requirements of this bill, notwithstanding any inconsistent provision of the city's or county's general plan, specific plan, zoning ordinance, or regulation.

**COMMENTS**

- 1) *Author's statement.* "SB 899 would make building affordable housing easier, faster, and cheaper for faith-based institutions, nonprofit hospitals, and nonprofit colleges that want to build affordable housing. Many of these are already community anchors, and this would help them build stable, safe, affordable housing for local residents and families and open doors to high-resource neighborhoods. Unfortunately, many of these institutions are located in areas that are not zoned to permit multifamily housing. This means the religious institution and affordable housing developer partner have to rezone the land, which is a tricky process that costs money and can cause long delays in building the affordable housing units Californians need. These religious institutions, nonprofit hospitals, and nonprofit colleges would partner with affordable housing developers and agree to maintain the affordability of these homes for at least 55 years for rental housing and 45 years for homeownership opportunities. Depending on the location of the property and proximity to major roads and commercial zones, these institutions would be able to build 40 to 150 new affordable homes without undergoing costly and time intensive rezonings."
  
- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair 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. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits

from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

- 3) *Background.* A report by Mercy Housing and the Low Income Investment Fund (August 2017) outlines nine case studies across the country where healthcare funds are being used to expand permanent housing and/or prioritize housing towards people who are high users of the healthcare system. These case studies include projects in Salinas, San Mateo, San Francisco, and Los Angeles, as well as the state-run developmental centers. The report notes that “the community development, housing and health fields are increasingly coming together around shared goals and vision, however, the translation from vision to real world practice has been harder than many anticipated” due to structural obstacles and financial barriers.

A report by the Local Initiatives Support Corporation (February 2020) focuses on the New York Land Opportunity Program (NYLOP), an initiative that helps property-owning churches and other mission-driven groups develop the expertise and partnerships needed to build affordable housing on their underutilized land. NYLOP, a partnership with New York City, launched three years ago with a series of informational workshops; three groups have since partnered with developers and these first projects are poised to create more than 300 units of affordable housing. In fall 2019, JP Morgan Chase invested \$500,000 into the program to help additional mission-driven organizations, including owners of HUD-assisted properties. The report notes that similar initiatives are now up and running in the Bay Area, San Antonio, and Buffalo, NY. In the Bay Area, LISC has launched the Alameda County Housing Development Capacity Building Program, with a first cohort of 10 churches in Berkeley and Oakland, several of which are currently drawing up development plans.

- 4) *Where does this bill apply?* This bill applies to land owned by a nonprofit hospital, nonprofit diagnostic or treatment center, nonprofit rehabilitation facility, nonprofit nursing home. It also applies to land owned by a religious institution, defined as an institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization. In addition, this bill includes land owned by nonprofit colleges, specifically non-public, non-profit higher education institutions that are accredited by an agency recognized by the US Department of Education. The author notes that many of these colleges have tight finances but own a significant amount of land; leasing some of this land for affordable housing could help generate needed revenue.
- 5) *What will these projects look like?* This bill applies to parcels that are at least one-quarter acre. It provides for a density of at least 35 dwelling units per acre and up to 36 feet in height for single-family zones, and at least 50 units per acre and up to 55 feet in height in residential, mixed-use, institutional, or commercial zones. It allows for ancillary uses on the ground floor of the development.
- 6) *Affordability requirements.* This bill requires units to be restricted to an average income of 80% AMI or lower, but not above 120% AMI. This provision is intended to provide flexibility to developers by enabling them to offset very low-income units with moderate income units. This bill also authorizes a religious institution, nonprofit hospital, nonprofit college, or qualified developer to restrict all units to 80% AMI or lower.
- 7) *Opposition concerns.* The Orange County Council of Governments, writing in opposition to this bill, states that by-right development reduces local input over housing and development projects and eliminates the ability of the local jurisdiction to work with the developer on concessions to reflect the character of the surrounding area. OCCOG further states that with the loss of redevelopment, what local agencies need to support the development of housing is incentives, funding, and partnership.
- 8) *Amendments.* **The author will accept amendments to correct a drafting error.** Specifically, the bill as currently written requires the rent for units in an eligible development to be 20% below the market rate for the city or county where the project is located. The amendments correct this to instead require the rent or sales price on a unit to be at least 20% below the market rate for a unit of similar size and bedroom count in the same neighborhood of the city or county where the project is located.

- 9) *Triple referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the other committees included in the original referral, as follows.

According to the Environmental Quality Committee:

“If a development project is deemed a use by right, it removes the ability of local governments to fully vet a project and be informed of the development’s potential environmental consequences. Not only does SB 899 not contain any project size restrictions nor site location restrictions as are found in similar housing bills, SB 899 allows these potentially large projects, with densities well above what is otherwise permitted by the jurisdiction’s land use policies, in areas not consistent with those policies. The larger a project site, the greater likelihood of encountering environmentally sensitive issues. Is it prudent to create a use by right for projects of potentially unlimited size? The cumulative impact of these projects could result in significant environmental impacts not previously contemplated by a local jurisdiction in its approved land use policies.”

According to the Governance and Finance Committee:

“Local zoning is a deliberative process that ensures a community is designed in a way that makes sense given local conditions. Many zoning ordinances designate a primary use that is allowed by-right, such as agricultural use, but also allow other uses, such as commercial, with a conditional use permit. SB 899 would allow buildings of up to 55 feet, plus density bonus, to go into some areas that aren’t zoned for housing without the ability for local officials to condition those developments to ensure that they fit with other surrounding uses. The bill also grants benefits to organizations that may have no experience constructing or managing housing. As noted by the Turner Center for Housing Innovation in a May 2020 report, ‘... most faith-based organizations do not have the experience or capacity to navigate the complex development process. For example, a faith-based organization may not account for the ongoing cost implications of maintaining housing over the long term, or could underestimate the value of retaining their land relative to their organization’s needs and goals.’ Because SB 899 extends unique authority to property owners that may lack the capacity to manage housing despite local zoning, it has the potential to result in poorly planned housing located in unsuitable areas.”

**RELATED LEGISLATION:**

**AB 1851 (Wicks)** — allows a religious institution to develop an affordable housing project at a place of worship owned by the religious institution even if the development requires the religious institution to reduce the number of religious-use parking spaces available at the place of worship. *This bill is in the Assembly Appropriations Committee.*

**SB 902 (Wiener)** — requires duplexes, triplexes, or fourplexes to be a use by right in zones where residential uses are permitted, as specified. *This bill will also be heard in the Senate Housing Committee today.*

**AB 101 (Budget and Fiscal Review, Chapter 159, Statutes of 2019)** — among other things, required “low-barrier navigation centers” to be a use by right, until January 1, 2027, as defined, in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if the development meets certain requirements.

**AB 2762 (Chiu, Chapter 753, Statutes of 2018)** – required supportive housing to be a use by right in all zones where multifamily and mixed uses are allowed, as specified.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, May 20, 2020.)

**SUPPORT:**

Non-profit Housing Association of Northern California (Co-Sponsor)  
 Southern California Association of Nonprofit Housing (Co-Sponsor)  
 350 Sacramento  
 All Home  
 Bay Area Council  
 Burbank Housing Development Corporation  
 California Apartment Association  
 California Community Builders  
 California Housing Partnership Corporation  
 California Rural Legal Assistance Foundation  
 California YIMBY  
 Chan Zuckerberg Initiative  
 Chinatown Community Development Center



East Bay Asian Local Development Corporation  
East Bay Housing Organizations  
Facebook, Inc.  
Habitat for Humanity California  
Hollywood Community Housing Corporation  
Housing Trust Silicon Valley  
Mayor of City & County of San Francisco London Breed  
Multi-Faith Action Coalition  
Resources for Community Development  
San Francisco Interfaith Council  
Silicon Valley At Home  
TechEquity Collaborative  
Tenderloin Neighborhood Development Corporation  
The Unity Council  
TMG Partners  
United Way Bay Area  
Western Center on Law & Poverty  
1 Individual

**OPPOSITION:**

Orange County Council of Governments  
1 Individual

**-- END --**