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

Bill No: SB 902 **Hearing Date:** 5/26/2020
Author: Wiener
Version: 5/21/2020 Amended
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and zoning: neighborhood multifamily project: use by right: density

DIGEST: This bill permits a local government to pass an ordinance to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, 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) Exempts the adoption of an ADU ordinance by a city or county from the California Environmental Quality Act (CEQA).

This bill:

- 1) Defines “transit rich area” as a parcel within one-half mile of a major transit stop or a parcel on a high quality bus corridor. Defines “high-quality bus corridor” as a corridor with a fixed-route bus service that meets specified service interval times.
- 2) Defines “jobs-rich area” as an area defined by the Department of Housing and Community Development (HCD), in consultation with the Office of Planning

and Research (OPR) that is high opportunity and either jobs rich or would enable shorter commuter distances based upon whether, in a regional analysis, the tract meets both of the following:

- a) The tract is high opportunity, meaning its characteristics are associated with positive educational and economic outcomes for households of all income levels.
 - b) The tract meets either of the following criteria:
 - i) New housing sited on the tract would enable residents to live near more jobs than is typical for tracts in the region.
 - ii) New housing sited in the tract would enable shorter commute distances for residents, relative to existing commute patterns for jobs-housing fit.
- 3) Requires HCD, beginning January 1, 2022, to publish and update, every five years thereafter a map showing “jobs-rich areas” as described in (2) above.
- 4) Defines “urban infill” site as a site that satisfies all of the following:
- a) A site that is a legal parcel or parcels located in a city if, and only 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.
 - b) A site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses.
 - c) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least 2/3 of the square footage of the development designated for residential use.
- 5) Permits a local government to pass an ordinance, notwithstanding any local restrictions on zoning ordinances, to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in one of the following:
- a) A transit-rich area.
 - b) A jobs-rich area.
 - c) An urban infill site.
- 6) Specifies that ordinances consistent with (5) above is not a project for purposes of CEQA.

COMMENTS

- 1) *Author's Statement.* According to the author, "SB 902 is a thoughtful and balanced approach to California's housing crisis that provides cities with a powerful new streamlining tool, if they choose to take advantage of it, for increasing density in non-sprawl areas to as many as 10 housing units per parcel. By allowing rezoning to occur in a sensible and streamlined way, SB 902 will help ease California's housing crisis, spurred by a statewide shortage of 3.5 million homes and California ranking 49 out of 50 states in homes per capita. 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 902 is a timely and powerful new tool for cities to use in their comprehensive planning efforts. SB 902 will help alleviate California's severe housing shortage by incentivizing light density increases in the right places, and giving flexibility to cities so that they can better utilize planning resources."
- 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.
- 3) *Zoning ordinances generally.* 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. A zoning ordinance may be subject to CEQA if it will have a significant impact upon the environment. The adoption of ADU

ordinances, however, are explicitly exempt from CEQA. There are also some several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.

- 4) *Denser Housing in Single-Family Zoning*. California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst's Office (LAO) found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

The UC Berkeley Turner Center conducted a residential land use survey in California from August 2017 to October 2018. The survey found that 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% of land. Some jurisdictions in the US have taken steps to increase density in single-family zones. For example, Minneapolis will become the first major U.S. city to end single-family home zoning; in December, the City Council passed a comprehensive plan to permit three-family homes in the city's residential neighborhoods, abolish parking minimums for all new construction, and allow high-density buildings along transit corridors. According to the 2016 McKinsey Report, California has the capacity to build between 341,000 and 793,000 new units by adding units to existing single-family homes.

A 2019 Zillow report found that even modest densification, such as duplexes and fourplexes could result in millions more homes. Across 17 metro areas analyzed nationwide, allowing 10% of single-family lots to house two units instead of one could yield almost 3.3 million additional housing units to the existing housing stock. In the L.A. region, if one in five single-family lots were re-zoned to hold two homes, the local housing stock could be boosted by 775,000 homes. Allowing four homes instead of two on those same 20% of single-family lots could yield a housing stock increase of more than 2.3 million

homes, or a 53.4% boost over the current stock when combined with homes already expected to be built.

- 5) *Housing near Transit*. Research has shown that encouraging more dense housing near transit serves not only as a means of increasing ridership of public transportation to reduce greenhouse gases (GHGs), but also as a solution to our state's housing crisis. As part of California's overall strategy to combat climate change, the Legislature began the process of encouraging more transit-oriented development with the passage of SB 375 (Steinberg, Chapter 728, Statutes of 2008). SB 375 is aimed at reducing the amount that people drive and associated GHGs by requiring the coordination of transportation, housing, and land use planning.

The McKinsey Report found that increasing housing demand around high-frequency public transit stations could build 1.2 – 3 million units within a half-mile radius of transit. The report notes that this new development would have to be sensitive to the community's character, and recommends that local communities proactively rezone station areas for higher residential density to pave the way for private investments, accelerate land-use approvals, and use bonds to finance station area infrastructure.

- 6) *Zoning not a project under CEQA*. In an effort to encourage denser housing, this bill authorizes a local government to pass an ordinance for the construction of housing up to 10 units in "transit-rich areas" (near transit), "jobs-rich areas" (high opportunity neighborhoods), and on infill sites. The local government may set the height requirements, and this ordinance would override any restrictive local zoning ordinances that limit the ability to adopt zoning ordinances. The ordinance authorized by this bill is not considered a project for purposes under CEQA. This provision is similar to the exemption authorized for the adoption of ADU ordinances. Current law requires ministerial approval of one ADU and one JADU per lot that is within an existing structure, as specified; one detached ADU within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, as specified; multiple ADUs within existing multifamily structures; or two detached ADUs on a multifamily lot, as specified.

The "jobs-rich" sites are intended to be similar to a mapping exercise that the California Tax Credit Allocation Committee (TCAC) in the State Treasurer's Office underwent to encourage low-income housing developments in high opportunity areas, with the goal of encouraging more inclusive communities in California.

- 7) *Senate's 2020 Housing Production Package.* This bill has been included in the Senate's 2020 Housing Production Package. As such, the bill was amended to remove provisions related to by right approval of duplexes, triplexes, and fourplexes, as specified, as well as the addition of co-authors.
- 8) *Opposition.* Those writing in opposition are opposed to removing community driven planning processes and stakeholder involvement. Some are opposed to upzoning single-family neighborhoods and are concerned about the lack of affordable housing requirements. Most writing in opposition to this bill are opposed to provisions that are proposed to be stricken from the bill.
- 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.

According to the Senate Governance and Finance Committee:

“In 1911, California voters amended the Constitution to provide voters the power to enact initiatives and referenda. The voter initiative is a “reserved power;” it is not a right granted to them, but a power reserved by them. As such, the power of initiative is integral to California’s political process. One common way the initiative power is used is to adopt urban growth boundaries or other growth management ordinances. Voters adopt these measures for a variety of reasons, some more noble than others. For example, some are adopted out of environmental concerns, such as preventing sprawl or reducing pressure to convert agricultural land to urban uses, while others are intended to block new neighbors from moving in. SB 902 allows local officials to adopt zoning that allows up to 10 units on a parcel, even if local voters have said they don’t want it. Should politicians be able to override the preferences of local voters?”

According to the Senate Environmental Quality Committee:

“A CEQA exemption for the approval of a zoning ordinance that would allow up to 10 residential units per parcel removes the ability of local governments to be fully informed of the ordinance’s potential environmental consequences. Without that review, would a local government be properly informed of traffic impacts, air impacts, or compatible use issues? Does bypassing CEQA

potentially create a liability for decisionmakers who should have known about those impacts? Is it appropriate for the public to live with the consequences of a zoning ordinance that may not be fully vetted and whose impacts are not mitigated and alternatives not considered?”

RELATED LEGISLATION:

AB 68 (Ting, Chapter 655, Statutes of 2019) — made a number of changes to existing law governing accessory dwelling units (ADUs).

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 2162 (Chiu, Chapter 753, 2018) — streamlined affordable housing developments that include a percentage of supportive housing units and onsite services

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

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

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

SUPPORT:

California YIMBY (Sponsor)
Habitat for Humanity California (Co-Sponsor)
350 Sacramento
All Home
Bay Area Council
California Apartment Association
California Building Industry Association
California Community Builders
Chan Zuckerberg Initiative
East Bay for Everyone
Facebook, Inc.
Hollywood YIMBY

House Sacramento
League of Women Voters of California
Livable Sunnyvale
Monterey Peninsula Renters United
New Pointe Communities
Non-profit Housing Association of Northern California
North County YIMBY
Peninsula for Everyone
San Francisco Bay Area Planning and Urban Research Association
San Francisco Housing Action Coalition
Santa Cruz YIMBY
Silicon Valley At Home
SLO County YIMBY
South Bay YIMBY
TechEquity Collaborative
The Greenlining Institute
TMG Partners
Ventura County YIMBY
Westside Young Democrats
YIMBY Action
YIMBY Democrats of San Diego County
YIMBY Voice
1 Individual

OPPOSITION

A Better Way Forward to House California
City of Dublin
City of Livermore
City of Newport Beach
City of Pleasanton
City of San Ramon
Los Angeles County Division, League of California Cities
New Livable California DbA Livable California
Orange County Council of Governments
San Francisco Tenants Union
Sherman Oaks Homeowners Association
South Bay Cities Council of Governments
Town of Danville
4 Individuals