

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1123 (Caballero) – As Amended June 13, 2024

SENATE VOTE: 31-5

SUBJECT: Planning and zoning: subdivisions: ministerial review

SUMMARY: Requires local agencies to ministerially approve the subdivision of vacant, single-family lots to allow for up to 10 parcels and 10 units, as specified, and makes other changes to SB 684 (Caballero), Chapter 783, Statutes of 2023. Specifically, **this bill:**

- 1) Expands SB 684, which required a local agency to ministerially approve the subdivision of a parcel map for up to 10 housing units and to allow the ministerial approval of any housing units on the site, as follows:
 - a) Adds vacant, single-family zoned sites beginning July 1, 2025. Defines “vacant” to mean having no permanent structures, unless the permanent structure is abandoned and uninhabitable. Prohibits all of the following types of housing from being defined as “vacant”:
 - i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rent or sales price to levels affordable to persons and families of low, very low, or extremely low income.
 - ii) Housing that is subject to any form of rent or sales price control through a local public entity’s valid exercise of its police power.
 - iii) Housing that has been occupied by tenants in the past five years preceding the date of application, including housing that has been demolished or tenants have vacated prior to the application for a development permit.
 - b) Allows a local agency to impose a height limit of no less than the height allowed pursuant to the existing zoning designation applicable to the lot on a vacant, single family site. This provision does not become operative until July 1, 2025.
 - c) Reduces the lot size for ministerial subdivisions for both multi-family and single family lots from no more than 5 acres to no more than 1.5 acres.
 - d) Requires parcels that are subdivided on single-family sites to be no smaller than 1,200 square feet on average.
 - e) Allows housing units on a lot subject to ministerial approval to be in a tenancy in common.
 - f) Prohibits an existing dwelling unit from being sold separately from any other existing dwelling unit on the lot.

- g) Provides a local agency with the option to allow accessory dwelling unit (ADUs) or junior ADUs on a ministerial subdivision of 10 parcels or less as specified and to not count them toward the 10 unit cap.
 - h) Prohibits a local agency from establishing a minimum requirement of “frontage”
 - i) Adds a definition of “net habitable square feet” to mean the finished and heated floor area fully enclosed by the inside surface of walls, windows, doors, and partitions, and having a headroom of at least six and one-half feet, including working, living, eating, cooking, sleeping, stair, hall, service, and storage areas, but excluding garages, carports, parking spaces, cellars, half-stories, and unfinished attics and basements.
 - j) Makes the above changes effective July 1, 2025.
- 2) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.
- 3) Finds and declares that this bill expands opportunities for more affordable housing types on smaller less expensive parcels, by doing so this bill addresses a matter of statewide concern and therefore applies to all cities, including charter cities.

EXISTING LAW: As established by SB 684 (Caballero), the Starter Home Revitalization Act, provides for the following [Government Code § 65852.28 and 66499.41]

- 1) Requires a local government to ministerially approve, without discretionary review or a hearing, a parcel map or a tentative and final map for a housing development project that meets, among others, the following requirements:
- a) The proposed subdivision will result in 10 or fewer parcels and the housing development project on the lot proposed to be subdivided will contain 10 or fewer units.
 - b) The proposed development is located on a lot that meets all of the following requirements:
 - i) The lot is zoned for multifamily residential development.
 - ii) The lot is no larger than five acres and substantially surrounded by qualified urban uses, as defined.
 - c) The parcels created will be no smaller than 600 square feet, unless allowed by the local government.
 - d) The housing units on the lot proposed to be subdivided are one of the following:
 - i) Constructed on fee simple ownership lots.
 - ii) Part of a common interest development.
 - iii) Part of a housing cooperative, as defined in Section 817 of the Civil Code.

- iv) Owned by a community land trust.
- e) The average total area of floor space of the proposed units does not exceed 1,750 net habitable square feet.
- 4) Provides that a housing development project on a proposed site to be subdivided does not have to comply with any minimum requirement on the size, width, depth, or dimensions of an individual parcel created by the development beyond the minimum parcel size.
- 5) Requires a local agency to ministerially consider an application for a project that meets the specified requirements of the Starter Home Revitalization Act.
- 6) Requires a local agency to approve or deny an application for a parcel map or a tentative map, or a development application, for a housing development project submitted to a local agency within 60 days from the date the local agency receives a completed application, as specified.
- 7) Allows a local agency to deny an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) on parcels created pursuant to the Starter Home Revitalization Act.
- 8) Delays the operative date of the Starter Home Revitalization Act to July 1, 2024.

FISCAL EFFECT: According to the Senate Appropriations Committee, “The Department of Housing and Community Development (HCD) may incur costs of over \$50,000 as a result of this bill’s expansion of the current requirements. HCD notes that the expansion to lots zoned for single-family residential use would result in increased technical assistance requests and may require additional workload to research and draft a written technical advisory for local government staff and applicants. See Staff Comments. (General Fund)

“Unknown local costs to provide for the review and approval of additional parcel maps, and tentative and final maps, and issuance of building permits, as specified. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)”

COMMENTS:

- 1) **Local Government Police Power.** 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. Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, and lot coverage ratios to increase open space, among others. These ordinances can also include conditions on development to address community impacts or other particular site-specific considerations. Local governments have broad authority to define the specific approval processes needed to satisfy these considerations, including the permits the developer must obtain.

- 2) **The Subdivision Map Act (SMA).** The SMA establishes a statewide regulatory framework for controlling the subdivision of parcels of land into two or more smaller parcels. The SMA is designed to complement a local government's planning and zoning law. Planning and zoning law controls the land use: the type, location, and intensity of development that is allowed on a parcel of land. The SMA enables the creation of those parcels, and ensures that new parcels are properly prepared for development, including grading and building infrastructure (such as roads and utilities).

The SMA provides discretion to local agencies for approving a "parcel map" (for subdivisions of 2-4 units) or a "tentative map" (for subdivision of five or more units). This discretion is designed to ensure that development projects properly improve the land with grading and infrastructure. Upon completion of these improvements, the local agency will issue a "final map," which establishes the subdivision of the land. Upon issuance of the final map, the developers is allowed to begin construction of buildings on the site.

The SMA's requirements for discretionary approvals and serial permitting make sense for development on unimproved land. But in infill locations, where land has already been improved, these requirements can cause significant delays and increase risk – all of which increases the cost of housing.

- 3) **SB 684 (Caballero) Chapter 783, Statutes of 2023.** Last year, SB 684 (Caballero) required local governments to ministerially approve a parcel map or tentative and final map of 10 or fewer units on sites zoned multifamily, no larger than five acres, and substantially surrounded by qualified urban uses. In addition, the bill required ministerial approval of housing developments using the SB 684 subdivision process. Both the subdivision and the approval of subsequent housing development on the lot are ministerial, meaning they do not trigger review under the California Environmental Quality Act (CEQA). Projects must meet minimum density requirements, as established in the housing element for that parcel, and comply with existing setback and height requirements. Units can be no greater than 1,750 net habitable square feet. The project must also comply with any local inclusionary requirements. If the project receives a tentative or parcel map pursuant to this bill, the local agency must issue the building permit based on the approved map under specified circumstances.

In addition, developers can begin construction and on-site improvements at the same time. To receive this parallel-tracking, the developer must have received a tentative or parcel map, and submit their building permit. The local agency may condition approval of the building permit on proof that the housing will not be occupied before the on-site improvements are complete. This approach to expediting development for infill sites is modeled after a process for developing small sites in the City of Los Angeles.

- 4) **Bill Summary.** This bill is a follow up bill to SB 684 (Caballero) and makes the following changes to law established by that bill:
 - a) **Single-family sites.** This bill would add vacant, single family sites to the ministerial subdivision process and the approval process for housing developments on subdivided sites with a few differences. For sites zoned single-family, a local government could cap the height of new units at the height for the applicable height in the zone. This would prevent developments that are not consistent in height with the surrounding single-family

homes. The bill allows a subdivision for a single family site be no less than an average of 1,200 square feet.

- b) **Defining “Vacant”.** SB 684 included demolition protections for multi-family properties that have deed restricted affordable units, rent controlled units, or housing occupied by tenants within the last five years including housing that has been demolished or that tenants have vacated prior to the submission of the application for a development permit.

This bill expands SB 684 to include “vacant” single-family zoned sites. The bill defines “vacant” to mean a site that has no permanent structure, unless the permanent structure is abandoned and uninhabitable. The bill’s definition of “vacant” does not include the deed restricted affordable housing, units subject to rent or sales price control, and housing that has been occupied by tenants within the last five years, including housing that has been demolished or that tenants have vacated prior to application of the development permit.

- c) **Lowering Minimum Density Requirements.** SB 684 requires that if a parcel was not included in the jurisdiction’s housing element, then the development has to result in at least as many units as the maximum allowable density. This bill lowers that requirement and requires any new development to result in at least 66% of the maximum allowable density as specified by local zoning or 66% of the applicable residential density, whichever is higher. If the density is not specified in the local zoning ordinance, then 66% of the Mullin Densities apply.
- d) **Defining Net Habitable Space.** Existing law includes a maximum of 1,750 net habitable square feet for the proposed housing units. This bill defines “net habitable square feet” to mean the finished and heated floor area fully enclosed by the inside surface of walls, windows, doors, and partitions, and having a headroom of at least six and one-half feet, including working, living, eating, cooking, sleeping, stair, hall, service, and storage areas. “Net habitable square feet” excludes garages, carports, parking spaces, cellars, half-stories, and unfinished attics and basements.
- e) **Other changes to the Law Established by SB 684.** The bill also allows for lots that contain units that are part of a tenancy in common to be eligible for a ministerial subdivision. The bill prohibits minimum frontage requirements and provides that if a local government chooses to permit ADUs or JADUs, the units shall not count towards the 10 unit cap.

This bill is co-sponsored by California YIMBY, California Community Builders, LISC San Diego, and the Central Valley Urban Institute.

- 5) **Author’s Statement.** According to the author, “Last year, I authored SB 684 to expand homeownership opportunities by streamlining the process to subdivide parcels and build modest density infill housing projects. The months following SB 684’s passage, I heard from a number of stakeholders on the ground that are excited to implement the legislation, but shared a number of issues that would help clarify the bill’s intent. SB 1123 incorporates needed clarity to ensure local agencies, developers, and other interested parties understand exactly when and how to use SB 684 in order to eliminate any unnecessary delay or uncertainty.”

- 6) **Policy Considerations.** Recent amendments inadvertently changed how the effective date of July 1, 2025 established by Senate Local Government Committee was applied. The Committee may wish to consider technical amendments to address the drafting error.
- 7) **Committee Amendments.** To address the policy consideration above, the Committee may wish to consider the following amendments.

- a) Add the following subdivision to Section 2 of the bill, which amends GOV § 65852.28:

(g) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2025.

- b) Striking the effective date from Section 3, which amends GOV § 66499.41, to read as follows:

GOV § 66499.41 (a)(2)(A) (i) ~~Before July 1, 2025, the lot is~~ **The lot is one of the following:**

~~(i) zoned~~ **Zoned** to allow multifamily residential dwelling use.

~~(ii) On and after July 1, 2025, the lot is one of the following:~~

~~(I) — Zoned to allow multifamily residential dwelling use.~~

(ii) Vacant and zoned for single-family residential development. For purposes of this clause, “vacant” means having no permanent structure, unless the permanent structure is abandoned and uninhabitable. All of the following types of housing shall not be defined as “vacant”:

~~(ia)~~ **(I)** Housing that is subject to a recorded covenant, ordinance, or law that restricts rent or sales price to levels affordable to persons and families of low, very low, or extremely low income.

~~(ib)~~ **(II)** Housing that is subject to any form of rent or sales price control through a local public entity’s valid exercise of its police power.

~~(ic)~~ **(III)** Housing occupied by tenants within the five years preceding the date of the application, including housing that has been demolished or that tenants have vacated prior to the submission of the application for a development permit.

- c) Add the following subdivision to Section 3, which amends GOV § 66499.41:

(k) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2025.

- 8) **Arguments in Support.** California YIMBY, California Community Builders, LISC San Diego, and the Central Valley Urban Institute, co-sponsors of the bill, write in support, “Passed in 2023, SB 684 (Caballero) streamlined approvals for ‘starter’ homes in infill developments of 10 homes or less in multi-family zones. It also amended the Subdivision Map Act to make it faster and easier to split a single parcel into multiple smaller ones, each

with their own home. SB 1123 expands SB 684 to allow the bill to be used on clearly defined vacant lots in single family zones—creating more affordable homeownership opportunities in neighborhoods that have traditionally excluded lower- and middle-income families and communities of color.

“The bill also incorporates changes to SB 684 in order to ensure that a variety of lower-cost homeownership types and builders are eligible to use the bill. It clarifies that if a local jurisdiction allows ADU’s on a project, those units do not count towards the project cap of 10 units, that tenancy in commons are included as eligible projects, and corrects language regarding community land trusts. It further ensures that a minimum number of homeownership units are built on specified parcels to meet the state’s demand for entry-level ownership housing.”

- 9) **Arguments in Opposition.** The League of California Cities writes in opposition, “Housing affordability and homelessness are among the most critical issues facing California cities. Affordably priced homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in the state. Cities lay the essential groundwork for housing production by planning and zoning new projects in their communities based on extensive public input and engagement and state housing laws. Importantly, cities are currently updating housing plans to identify sites for more than two million additional housing units.

“SB 1123 ignores this state-mandated local planning effort and forces cities to allow up to 10 times more density on parcels set aside for a single-family home. This seriously questions the rationale for the regional housing needs allocation (RHNA) process. If developers can disregard existing zoning requirements, why should cities go through the multiyear planning process to identify sites suitable for new housing units, for those plans to be ignored.”

- 10) **Double-Referral.** This bill was double-referred to the Assembly Housing and Community Development Committee, where it passed on a 7-1 vote on June 12, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

California YIMBY (SPONSOR)
 California Community Builders (SPONSOR)
 LISC San Diego (SPONSOR)
 Central Valley Urban Institute (SPONSOR)
 All Home
 Buildcasa
 California Building Industry Association (CBIA)
 California Chamber of Commerce
 California Community Economic Development Association (CCEDA)
 Central City Association of Los Angeles
 Circulate San Diego
 East Bay Yimby
 Eastside Housing for All
 Fieldstead and Company, INC.

Fremont for Everyone
Grow the Richmond
Habitat for Humanity
Housing Action Coalition
Housing Trust Silicon Valley
Livable Communities Initiative
Monterey Bay Economic Partnership
Mountain View Yimby
Napa-solano for Everyone
Northern Neighbors
Peninsula for Everyone
Progress Noe Valley
Redlands Yimby
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Spur
Streets for People
Unidos US
Urban Environmentalists
Urban League of San Diego County
Ventura County Yimby
Yimby Action
Yimby Slo

Opposition

California League of Cities

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