

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 610 (Alvarez) – As Amended April 10, 2025

SUBJECT: Housing element: governmental constraints: disclosure statement

SUMMARY: Makes changes to the contents of the governmental constraints analysis that must be included in a local government's housing element and prohibits local governments from adopting or increasing the stringency of certain "covered governmental constraints" within three years from the date the housing element is considered in substantial compliance, with exceptions. Specifically, **this bill:**

- 1) Adds to the required housing element analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, the inclusion of a governmental constraints disclosure statement containing both of the following:
 - a) An identification of each new potential or actual governmental constraint, or a revision increasing the stringency of a governmental constraint, adopted after the due date of the previous housing element.
 - b) An identification of each new or amended potential or actual governmental constraint, or a revision increasing the stringency of a governmental constraint, that is under consideration or proposed to be adopted during the planning period.
- 2) Defines "covered governmental constraint" for purposes of the bill to mean any of the following actions by a local government:
 - a) A fee, exaction, or affordability requirement, as specified;
 - b) A development policy or standard that would, with respect to land where housing is an allowable use, have the effect of reducing the intensity of land use for residential development, as specified;
 - c) A development policy or standard that would increase the procedural burden on applicants under, or narrow or otherwise restrict the potential benefits to applicants of Density Bonus Law, including, but not limited to, the availability of waivers, concessions, or incentives; or
 - d) A new or more stringent historic district or designation affecting a site included in the housing element's inventory of land suitable and available for residential development or identified in a rezone program to provide adequate sites to accommodate the jurisdiction's share of the regional housing need for all income levels.
- 3) Prohibits a local government from adopting a new or amended "covered governmental constraint" or a more stringent revision of a "covered governmental constraint" for three years from the date the housing element or amendment is considered in substantial compliance with Housing Element Law, unless either of the following conditions is met:

- a) The measure was included in the governmental constraints disclosure statement under 1) above and the local government has completed all of the housing element program commitments to eliminate or mitigate covered governmental constraints contained in the prior and current planning periods; or
- b) Either of the following conditions is met:
 - i) Adoption of the measure is required by state or federal law and the local government demonstrates, by a preponderance of the evidence, that the measure is no more stringent than required to comply with state or federal law; or
 - ii) The local government makes a determination, supported by a preponderance of the evidence, that failure to adopt the measure would create health and safety conditions supporting a moratorium or similar restriction or limitation on housing development, as specified, and the Department of Housing and Community Development (HCD) concurs in the determination.
- 4) Provides that nothing in this bill limits or restricts HCD's existing authority with respect to reviewing any local government action or failure to act, including pursuant to existing law requiring HCD to review any action or failure to act by a local government that is inconsistent with its adopted housing element, or requiring HCD to notify a local government and authorizing HCD to notify the office of the Attorney General if a local government is in violation of specified state housing laws.
- 5) Finds and declares that the bill addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities
- 6) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill.

EXISTING LAW:

- 1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:
 - a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need (RHNA), among other things;
 - b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

- c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. [Government Code (GOV) § Section 65583(a)-(c)]
- 2) Requires a local government's inventory of land suitable for residential development to be used to identify sites throughout the community that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the RHNA for all income levels. Defines "land suitable for residential development" to include:
- a) Vacant sites zoned for residential use;
 - b) Vacant sites zoned for nonresidential use that allows residential development;
 - c) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a jurisdiction; and
 - d) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary and as specified. [GOV § 65583.2(a)]
- 3) Requires a local government's housing element to include an assessment of housing needs and an inventory of resources and constraints that are relevant to meeting these needs, including an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including special needs housing, which must analyze land use controls, building codes and their enforcement, site improvements, fees and exactions, local processing and permit procedures, historic preservation practices and policies, and any locally adopted ordinances that directly impact the cost and supply of residential development. Further requires the analysis to demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of RHNA, and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters, as specified. [GOV 65583 § (a)(5)]
- 4) Requires a planning agency to provide an Annual Progress Report (APR) to the legislative body, the Office of Planning and Research, and HCD by April 1 of each year that includes certain information, including the progress in meeting its share of RHNA, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element [GOV § 65400(a)(2)]

FISCAL EFFECT: This bill is keyed fiscal and contains state mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill proposes to create a new “covered governmental constraint” category for purposes of housing elements, to mean imposition of any of the following by the local government:
 - a) A fee, exaction, or affordability requirement (i.e. inclusionary housing requirement);
 - b) A development policy or standard that would, with respect to land where housing is an allowable use, have the effect of reducing the intensity of land use for residential development, as defined in the Housing Crisis Act of 2019 (HCA);
 - c) A development policy or standard that would increase the procedural burden on applicants under, or narrow or otherwise restrict the potential benefits to applicants of Density Bonus Law (DBL), including the availability of waivers, concessions, or incentives; and
 - d) A new or more stringent historic district or designation affecting a site included in the housing element’s sites inventory or in a rezone program to accommodate the RHNA.

The bill prohibits a city or county from adopting a new or more stringent version of any of the above policies for three years after the housing element is deemed to be in substantial compliance with the law. However, a city or county could adopt a more stringent version of these policies in the three-year window after adopting a compliant housing element, if the city or county identified the proposal or policy in their “disclosure statement” (as described above) and has completed any program commitments to eliminate or mitigate these same “covered governmental constraints.”

This restriction would not apply in situations where the adoption of the measure is required by state or federal law or in situations where there are health and safety conditions that prompt a moratorium or other limitation on housing development – for example, due to flooding risk – to which HCD also agrees.

This bill is sponsored by California Building Industry Association and Spur.

- 2) **Author’s Statement.** According to the author, “California is facing a housing crisis that demands immediate and decisive action. For too long, local policies have prioritized exclusion and bureaucracy over the urgent need for housing equity. AB 610 represents a vital step toward accountability and transparency, requiring local governments to disclose any new regulations during the planning period while ensuring they first fulfill existing commitments to remove barriers to housing. This bill prioritizes the needs of marginalized communities—those impacted by homelessness, overcrowding, and exploitative conditions—by mandating analysis of emergency shelter capacity and supportive housing.

“AB 610 aligns local actions with state goals, urging every city and county to contribute to dismantling barriers rather than building them.”

- 3) **Permitting Power.** Planning for and approving new development 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 land use authority through zoning regulations, as well as through an “entitlement process” for obtaining discretionary as well as ministerial approvals.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review pursuant to CEQA, and project review by the local agency’s legislative body (city council or county board) or by a planning commission delegated by the legislative body.

- 4) **Adoption and Implementation of Housing Elements.** One important tool in addressing the state’s housing crisis is to ensure that all of the state’s cities and counties appropriately plan for new housing. Such planning is required through the housing element of each city’s and county’s General Plan, which outlines a long-term plan for meeting the community’s existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in the most highly populated parts of the state, and five years in areas with smaller populations. Cities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the “builder’s remedy” as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or court receivership. Localities that do not adopt a compliant housing element within 120 days from their statutory deadline also must complete any rezones within one year of their deadline, rather than the three years afforded to on-time adopters.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its RHNA which is a figure determined by HCD through a demographic analysis of housing needs and population projections. HCD establishes its determination of each COG’s regional housing targets across the state for the next five- or eight-year planning cycle. Each COG (or in some areas, HCD acting directly as COG) then sub-allocates the RHNA to each local government within the COG’s jurisdiction, and in turn each jurisdiction uses its housing element to show how it will accommodate that number of new housing units, split out by income level and with a focus on certain special needs housing types and on affirmatively furthering fair housing.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow or extremely difficult to build.

Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and not engage in exclusionary zoning practices.

- 5) **Analysis of Constraints.** Existing law requires each local government to include in its housing element an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and housing types. This includes land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permitting procedures, as well as any locally adopted ordinances that directly impact the cost and supply of residential development. This analysis must also include local efforts to remove governmental constraints that hinder the local government from meeting its RHNA share and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters.

Existing law also requires each local government to include in its APR information about its efforts to remove governmental constraints to the maintenance, improvement, and development of housing.

- 6) **Policy Considerations.** This bill identifies fees, exactions, or affordability requirements as “covered government constraints”. As defined, exaction includes: construction excise taxes, a requirement that the housing development project provide public art or an in-lieu payment, dedication of parkland or in-lieu fees, or Mello-Roos taxes. “Fees” means a fee or charge described in the Mitigation Fee Act. An “affordability requirement” means a requirement imposed as a condition of a development of residential units that the development include a certain percentage of the units affordable for rent or sale to households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income household.

- a) **Fees and Exactions.** Although the bill’s timelines are triggered by the housing element that cities and counties prepare and adopt, fees and exactions capture more than just cities and counties. Special districts also impose and raise fees and exactions to provide services and infrastructure development for the communities they serve. Generally, fees and exactions are not assessed during the housing element and, depending on the fee, have their own independent process for increase or changing the fee or exaction.

Additionally, in 2024, the Legislature passed significant reform to fees and exactions imposed on housing development projects, including SB 937 (Wiener), Chapter 290, Statutes of 2024. SB 937 (Wiener) limited the types of impact fees for which a local agency can collect before a certificate of occupancy is issued. SB 937 also specified the process for local agencies to guarantee collection of funds and required a developer to begin construction within five years if fees are deferred. If this bill were to become law, it is unclear how it would interact, complement, or contradict existing law.

The Committee may wish to consider if this provision is necessary in light of guardrails in existing law for the application and increase of fees and exactions.

- b) **Affordability Requirements.** Various pieces of legislation for the past 10 years have addressed the need for affordable housing in California. The Legislature has provided incentives, concessions, benefits, streamlining, and exemptions for specified affordable housing projects. The Legislature has also required cities and counties to affirmatively further fair housing and ensure that there are affordable units equitably distributed across all communities. The Committee may wish to consider if limiting a local

government's ability to require affordable housing is consistent with the State's housing goals and previous legislation.

- 7) **Related Legislation.** AB 650 (Papan) extends various timelines in the RHNA and housing element process, requires HCD to provide specific analysis or text to local governments to remedy deficiencies in their draft housing elements. This bill is pending in this Committee.

AB 906 (M. Gonzalez) makes various changes to the requirement for local governments to affirmatively further fair housing in the housing element. This bill is pending in this Committee.

- 8) **Previous Legislation.** AB 2580 (Wicks), Chapter 723, Statutes of 2024, required historic preservation policies and practices to be evaluated as potential constraints on housing in the housing element process, and required cities disclose to HCD any newly adopted historical designations via the APR.

SB 937 (Wiener), Chapter 290, Statutes of 2024, limited the types of impact fees for which a local agency can collect earlier than certificate of occupancy, specified the process for local agencies to guarantee collection of funds, and required a developer to begin construction within five years if fees are deferred.

AB 1505 (Bloom), Chapter 376, Statutes of 2017, authorized the legislative body of a city or county to establish inclusionary housing requirements as a condition of the development of residential rental units, and allowed HCD to review inclusionary ordinances in specified circumstances.

- 9) **Arguments in Support.** According to the California Building Industry Association and SPUR, the bill's cosponsors, "We recognize the importance of a clear and predictable regulatory framework that allows for the efficient planning and construction of new housing. However, many local jurisdictions impose additional regulatory burdens after their housing elements have been certified by the Department of Housing and Community Development (HCD), significantly hampering our ability to meet housing production goals. ... The housing crisis in California demands that we remove unnecessary and unpredictable regulatory barriers that delay construction and increase costs. By preventing local governments from implementing unanticipated constraints outside of the standard review process, AB 610 will create a more stable and fair housing development environment."

- 10) **Arguments in Opposition.** The League of California Cities writes in opposition, "For decades, cities have worked with HCD to draft housing plans accommodating their fair share of housing at all income levels. These extensive and complex plans can take years to develop, including public involvement, engagement, and environmental review. Cities go to great lengths to ensure that their housing element substantially complies with the law. Current law requires local agencies to account for any regulatory barriers enacted at the local level that are impacting residential development. ... This measure would prohibit local governments from responding to their community to current events in housing policy by making null and void any proposed regulations that were not disclosed in the housing element."

- 11) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee, where it passed on an 11-0 vote on April 24, 2025.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association (Co-Sponsor)
Spur (Co-Sponsor)
Abundant Housing LA
California Apartment Association
California Association of Realtors
California Business Properties Association
California Business Roundtable
California Yimby
Circulate San Diego
East Bay Yimby
Fieldstead and Company, INC.
Grow the Richmond
Inner City Law Center
Leadingage California
Los Angeles Area Chamber of Commerce
Mountain View Yimby
Napa-solano for Everyone
New California Coalition
Northern Neighbors
Peninsula for Everyone
Santa Cruz Yimby
Santa Rosa Yimby
Sf Yimby
South Bay Yimby
South Pasadena Residents for Responsible Growth
Southern California Leadership Council
The Two Hundred
Ventura County Yimby
Yimby Action
Yimby LA
Yimby Slo

Opposition

California Contract Cities Association
California Rural Legal Assistance Foundation (Unless Amended)
City of Carlsbad
Murrieta; City of
Public Interest Law Project (Unless Amended)

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