

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
AB 115 (Bloom) – As Amended April 20, 2021

**SUBJECT:** Planning and zoning: commercial zoning: housing development.

**SUMMARY:** Makes housing an authorized use on commercially-zoned land. Specifically, **this bill:**

- 1) Makes a housing development an authorized use on a site designated for commercial uses in any local government's zoning code or maps, notwithstanding any inconsistent provision of a city's or county's general plan, specific plan, zoning ordinance, or regulation, if the following apply:
  - a) At least 20 percent of the units are subject to a deed restriction requiring them to be affordable to lower income households;
  - b) The site is not adjacent to any site that is an industrial use, including, but not limited to, utilities, manufacturing, wholesale trade, transportation, and warehousing; and,
  - c) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.
- 2) Requires a city or county to apply the following development standards to any housing development that meets the criteria above, unless the existing local zoning standards are less restrictive:
  - a) The height limit must be equal to the greatest of the following:
    - i) The highest allowed height for the site;
    - ii) The highest allowed height for commercial use or residential use within a half-mile of the site; or,
    - iii) Thirty-six feet;
  - b) The maximum floor area ratio must be equal to 0.6 times the number of stories allowed by the height limit;
  - c) The density must be equal to the greater of the following:
    - i) The greatest allowed density for mixed use or residential use within a half-mile of the site; or,
    - ii) The applicable density deemed appropriate to accommodate housing for lower income households contained in housing element law; and,
  - d) The housing development must adhere to any applicable local design standards, provided those standards do not prohibit the maximum height, density, and floor area ratio.

- 3) Provides that a housing development must be deemed consistent, compliant, and in conformity with local development standards, zoning codes or maps, and the general plan if it meets the requirements specified above.
- 4) Provides that a housing development described in this bill may also apply for a density bonus.
- 5) Provides that a jurisdiction is only subject to the requirements in this section until it has completed any rezoning required by the 6th revision of its housing element.
- 6) Includes a sunset of January 1, 2031.
- 7) Finds and declares that ensuring the adequate production of affordable 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, and therefore this bill would apply to all cities, including charter cities.
- 8) Expresses legislative intent to develop and implement high-road labor policies to use a skilled construction workforce for projects utilizing the provisions of this bill.
- 9) 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) Planning and Zoning Law 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.
- 2) Housing Element Law requires that local housing elements include 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.
- 3) The California Environmental Quality Act (CEQA) requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for the project, unless the project is exempt from CEQA.

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

**COMMENTS:**

- 1) **Author Statement.** According to the author, "Californians are facing a housing affordability crisis, with the most significant impact on lower-income renters. Of 6 million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. To solve the shortage, the California Housing Partnership estimates that the state needs an additional 1.4 million homes

that are affordable to lower-income Californians. AB 115 will help increase the supply of available sites for housing developments by allowing critically needed housing in commercial corridors.”

- 2) **State Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst’s Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to CEQA review as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 3) **Bill Summary.** This bill would make housing development projects an authorized use on commercial infill sites that are not adjacent to industrial uses, as long as the projects include a deed restriction requiring that at least 20 percent of the units are affordable for lower income households. This bill additionally requires a local agency to apply specified design and development standards to these projects. The bill also expresses legislative intent to use a skilled construction workforce for projects included in the bill’s provisions. Finally, the bill deems its provisions are inapplicable in jurisdictions that have completed their rezoning required by the 6<sup>th</sup> revision of their housing elements. The bill sunsets on January 1, 2031.

This bill is sponsored by the California Housing Consortium, and the Southern California Association of Nonprofit Housing. .

- 4) **Zoning Codes and Designations.** Zoning codes are generally adopted by cities and counties to identify allowable activities (e.g. office, retail, housing, etc.) as well as the allowed intensity of those activities (e.g. height, density, etc.) in specific areas of their jurisdiction. Zoning codes are as varied in detail and specificity as cities and counties themselves. Some jurisdictions opt for broad, all-encompassing zoning designations that allow multiple uses. Others adopt remarkably specific zoning designations that regulate allowable uses to a fine degree of detail. In addition to identifying the types of uses allowed (and not allowed) within a specific zone, cities and counties may denote the conditions under which a use is allowed. For example, a city may allow single family housing construction as a use by right in a low density residential zone, but require a conditional use permit for multifamily developments of more than five units in that same zone.

Cities and counties may also grant variances from strict application of the code to allow developments that otherwise would not comply with the strict interpretation of the zoning code. The process for granting a variance may be embedded in the zoning code and is typically subject to a hearing by the zoning administrator or the legislative body of the city or county.

- 5) **The 6<sup>th</sup> RHNA Cycle.** Housing Element Law requires cities and counties to adequately plan to meet their existing and projected housing needs, including their share of the regional housing need for four different income categories (very low income, low income, moderate income and above moderate income). In the period between the 5th and 6th revisions of the housing element, legislative changes were made to the RHNA process and methodology to

ensure that housing needs reflected not just current demand, but unmet demand as well. As such, throughout the state, many cities and counties will be required to plan for substantially more growth than before. For example, in the 5<sup>th</sup> RHNA Cycle, the Southern California Association of Governments (SCAG) received a total RHNA of **409,000 – 438,000**. By contrast, in the 6<sup>th</sup> RHNA Cycle, SCAG received a RHNA of **1,341,827**. Upon completion of this cycle of housing element revisions, the state is expected to have sufficiently zoned land to accommodate the housing deficit discussed above.

- 6) **Updating Zoning Ordinances.** In order to comply with Housing Element Law, each city and county must demonstrate that development capacity exists to accommodate, at a minimum, the allocation for housing in each of the four income categories. If a jurisdiction lacks adequate sites to accommodate the development capacity required to meet its share of the regional housing need, the jurisdiction must update its zoning ordinance(s) to accommodate the units identified in their housing element. Given that some regions must accommodate housing needs two to four times larger than previous cycles, it is reasonable to assume that a substantial number of cities and counties will need to rezone land in order to increase development capacity and comply with Housing Element Law.

A city or county can increase its development capacity by amending its zoning ordinance in a variety of ways. For example a city or county may amend the zoning ordinance to: increase the allowed development intensity of existing residential land (e.g., upzoning and increasing the maximum allowed density per acre), reclassify land from nonresidential to residential, change land-use policies to reduce or eliminate requirements that limit development capacity, or through a combination of those actions and other policies. Additionally, in order to expedite development, a city or county could specify that certain types of projects are eligible for by-right approval in specific zones within its jurisdiction. This could include allowing by right approval for projects such as those identified in this bill. As a consequence of Housing Element Law, many cities and counties will have a statutory duty to update their zoning ordinance in the next few years. However, while updating their zoning code may be mandatory, the way a local agency chooses to amend its zoning ordinance is a discretionary project under CEQA.

- 7) **Zoning Ordinances and CEQA.** CEQA establishes a process for evaluating the environmental effects of a project. Under CEQA, a local agency carrying out a discretionary project must first determine if the project may have a significant effect on the environment. Projects can include jurisdiction-wide efforts such as the update of a general plan, approval of jurisdiction-wide contracts (e.g., waste hauling contracts or water service), and zoning ordinance amendments. A project can also include individual development actions such as the approval of housing developments, stadiums, gas storage facilities, and other types of developments. In the case of any discretionary project, if a local agency finds that the potential for significant environmental impacts exists, CEQA requires the agency to prepare and certify the completion of an environmental impact report (EIR). While CEQA includes certain statutory and categorical exemptions, the provisions of CEQA explicitly apply to “discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.” (Emphasis added).

Under current law, in order to allow the type of development contemplated in this legislation on commercially zoned land, a city or county would need to either amend their zoning ordinance to rezone the land, issue a zoning variance that allows the approval of the inconsistent land-use on the commercial parcel, or approve the project with a conditional use permit. All of these actions are typically subject to CEQA. Under this bill, certain parcels would effectively be statutorily rezoned and housing developments specified in this bill would be considered authorized uses on these parcels. Therefore, under this bill, there is no obligation for a city or county to conduct a CEQA review in order to examine the potential environmental impacts associated with rezoning the land because the local agency is not taking any discretionary action to rezone the land. However, it is unclear how a city or county would proceed and approve an individual housing development project that meets the criteria of this bill on these statutorily rezoned parcels, and whether the approval of the development would be considered a discretionary project subject to CEQA.

- 8) **Housing Development Projects and CEQA.** In light of the state's ongoing housing crisis, the Legislature has created several exemptions from CEQA for specific types of housing development projects in order to increase the production of housing. This is commonly done by stipulating that a specific type of housing development project is not subject to CEQA, or by requiring a local agency to approve specified housing development projects ministerially. Ministerial approvals remove a project from all discretionary decisions of a local city or county government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially also creates exemptions from CEQA. Several bills pending before the Legislature include requirements for local agencies to ministerially approve certain housing projects, creating an undeniable CEQA exemption for projects identified in those bills.

This bill does not include a specific exemption from CEQA or a requirement for local agencies to ministerially approve housing developments that meet the bill's criteria on these sites. The bill deems housing development projects meeting its criteria to be an "authorized use" on these parcels, which suggests that discretionary review is limited. However, the bill also requires housing development projects to comply with design standards imposed by the city or county, which suggests that the local agency may have some degree of discretion in its review. As noted above, it is unclear how an agency would approach approval of such a development. If a local agency finds that the development requires a variance or conditional use permit, the approval could be considered a discretionary project under CEQA. Further, should the parcel require subdividing prior to approving the housing development, CEQA could be triggered if the subdivision requires the issuance of a tentative and final map.

Opponents of the bill argue that this bill could allow housing on sites where housing is currently prohibited, completely free of CEQA review. It is clear that statutorily changing the zoning designations for parcels identified in this bill would obviate CEQA review that would normally be triggered for a zoning ordinance amendment. However, it is unclear if a local agency's action approving a housing development itself on these sites is considered discretionary and subject to CEQA, or if it is exempt from CEQA. It is also possible that, independent of this legislation, another statutory exemption from CEQA could apply to projects identified in this bill. The author may wish to clarify if a local agency's action to approve individual housing developments identified in this bill are subject to CEQA.

- 9) **Arguments in Support.** The California Housing Consortium writes in support, “The development of mixed-use and mixed-income projects on underutilized retail and office property can serve as a catalyst for economic growth while at the same time addressing California’s ongoing housing shortage. A December 2020 study by the UC Berkeley Turner Center for Housing Innovation found that California’s four largest metros—Los Angeles, San Francisco Bay Area, San Diego, and Sacramento—have an abundance of land zoned for commercial uses, that roughly 41 percent of commercial zones in the state’s 50 largest cities currently prohibit residential development as determined by their base zoning designations, and that allowing residential development in these areas could introduce new housing opportunities in virtually every neighborhood.

“AB 115 will allow housing developments that include at least 20% of units for lower-income households to be allowed on certain sites designated for commercial uses. This will advance infill development goals, bringing residents closer to jobs, amenities, and transit, thus reducing per capita greenhouse gas emissions from personal automobile use. This bill is critical to helping us close our tremendous affordability gap and ensure that lower-income Californians have access to safe, stable, affordable places to call home in every community across the state.”

- 10) **Arguments in Opposition.** The State Building and Construction Trades Council writes in opposition that this bill, “takes zoning decisions completely out of the hands of local leaders and members of their communities including our nearly half a million members and their families that live in every community across the state. Because the bill makes housing an authorized use without requiring rezoning and existing law already provides by right housing and CEQA exemptions for many, if not most, housing projects, market-rate housing on sites where housing is currently prohibited would be completely free of CEQA review or any ability for the public to provide input.

“In addition to silencing the voice of working families and communities, this bill also seeks to short shrift the workers who will build these developments. While this bill, if enacted, will certainly create significant and unchecked profits on the part of developers, it provides no labor standards for construction workers including the requirement to pay the area prevailing wage or requirements for contractors to support apprenticeship by utilizing a skilled and trained workforce.”

- 11) **Amendments.** The Committee may wish to consider the following:

- a) **Committee Amendments.** To address some of the concerns identified by opponents, the Committee may wish to consider requiring projects allowed under this bill to include prevailing wage provisions and requirements to employ a skilled and trained work force, as a condition of eligibility.
- b) **Author’s Amendments.** Due to compressed committee referral deadlines, the author was unable to adopt author’s amendments prior to the Committee deadline. The Committee may wish to incorporate the following amendments proposed by the author. Specifically, the author would like to amend the bill in the following ways:
  - i) Specify that a recorded deed restriction must last at least 55 years;
  - ii) Allow a local agency to require a higher percentage of affordability;

- iii) Exclude sites that are on a hazardous sites list prepared by the Department of Toxic Substances Control;
- iv) Require the site of the housing development to be subject to a preliminary endangerment assessment prepared by an environmental assessor and to require specific mitigation actions if certain hazardous conditions are found to exist;
- v) Exclude sites within very high fire hazard severity zones, as defined;
- vi) Align the maximum height requirements with the density limits specified in the bill;
- vii) Specify that the sunset date in the bill does not apply to units that are 100 percent affordable for lower income households, as defined; and,
- viii) Exclude sites that have a designated use established by a vote of the electorate that occurred prior to January 1, 2020.

12) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 5-2 vote on April 15, 2021.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Housing Consortium [SPONSOR]  
 Southern California Association of Nonprofit Housing [SPONSOR]  
 Abode Communities  
 Abundant Housing LA  
 Affirmed Housing  
 AMG & Associates, LLC  
 Ascencia  
 Bridge Housing Corporation  
 California Housing Partnership Corporation  
 California Rural Legal Assistance Foundation  
 Century Housing  
 Community Housingworks  
 EAH Housing  
 East Bay for Everyone  
 East Bay Housing Organizations  
 Eden Housing  
 Facebook, INC.  
 Housing California  
 Jamboree Housing Corporation  
 Linc Housing  
 Los Angeles Homeless Services Authority  
 Mercy Housing  
 Merritt Community Capital Corporation  
 Non-profit Housing Association of Northern California  
 Path  
 San Diego Housing Federation

Sinanian Development, INC.  
The Pacific Companies  
The People Concern  
Wakeland Housing and Development Corporation  
Western Center on Law & Poverty

**Oppose Unless Amended**

Aids Healthcare Foundation  
California Association of Realtors

**Opposition**

California Cities for Local Control  
California Labor Federation, AFL-CIO  
City of Torrance  
Town of Danville  
City of Dublin  
International Brotherhood of Boilermakers, Western States Section  
City of Livermore  
City of Pleasanton  
City of San Ramon  
Southwest California Legislative Council  
State Building and Construction Trades Council of California

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