

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1490 (Lee) – As Amended April 10, 2023

SUBJECT: Affordable housing development projects: adaptive reuse.

SUMMARY: Creates a ministerial, streamlined approval process for the adaptive reuse of buildings into 100 percent affordable housing. Specifically, **this bill:**

- 1) Defines “adaptive reuse” to mean the retrofitting and repurposing of an existing building to create new residential units.
- 2) Defines “use by right” to mean a development project does not require discretionary local government review and is not a “project” for purposes of the California Environmental Quality Act (CEQA).
- 3) Allows a development proponent to submit an application for a project that is a use by right, notwithstanding any inconsistent provision of a local government’s general plan, specific plan, zoning ordinance, or regulation, if the proposed housing development satisfies all of the following objective planning standards:
 - a) The development contains multiple housing units and the square footage of the development is at least two-thirds residential.
 - b) The development is an adaptive reuse project.
 - c) The development meets all of the following affordability criteria:
 - i) It dedicates one hundred percent of the units within the development project, excluding managers’ units, to lower-income households at an affordable housing cost or an affordable rent, as specified.
 - ii) It dedicates at least 50 percent of the units within the development project to very-low income households at an affordable housing cost or an affordable rent, consistent with the rent limits established by the California Tax Credit Allocation Committee.
 - iii) The units are subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.
 - d) The development is not proposed to be located on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use, as specified.
- 4) Specifies the following approval process:
 - a) Requires a local government to approve a development if the local government determines that the development is consistent with the objective planning standards specified in the bill.

- b) If a local government determines that a development is in conflict with any of the objective planning standards specified in (3), it must provide the development proponent written documentation of which standard(s) the development conflicts with, and an explanation for the reason(s) the development conflicts with that standard(s), within specified timeframes.
- 5) Specifies that a local government cannot impose any of the following standards on a project approved pursuant to this act:
- a) Any maximum density requirements.
 - b) Any maximum floor area ratio requirements.
 - c) Any requirement to add additional parking.
 - d) Any requirement to add additional open space.
- 6) Requires the project to meet specified labor standards, including:
- a) Payment of the prevailing wage for all construction workers.
 - b) For projects of 50 or more units, health benefits for all construction workers.
 - c) All contractors must either participate in a state-approved apprenticeship program or request the dispatch of apprentices from a program. If no apprentice workers are available, enables the project to move forward, but no workers can receive apprentice wages.
 - d) Allows the labor standards to be enforced by any of the following:
 - i) The Labor Commissioner through the issuance of a civil wage and penalty assessment, as specified, within 18 months after the completion of the development.
 - ii) An underpaid worker through an administrative complaint or civil action.
 - iii) A joint labor-management committee through a civil action, as specified.
- 7) Requires the following regarding local sources of funding for affordable housing:
- a) That any source of funding that can be used for the development of affordable housing must include adaptive reuse as an eligible project.
 - b) That an agency with control of a local source of funding cannot prohibit or exclude a project proposal solely on the basis that the proposal is for an adaptive reuse project.
- 8) Provides that the Legislature finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair. Therefore, it applies to all cities, including charter cities.

- 9) Requires that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, the state must reimburse local agencies and school districts for those costs.

EXISTING LAW:

- 1) Establishes Project Homekey, which provides housing for individuals and families who are experiencing homelessness or who are at risk of homelessness, including by enables a by right process for the acquisition and rehabilitation of motels, hotels, and hostels into housing (Health and Safety Code § 50675.1.1-50675.1.3).
- 2) Establishes, pursuant to AB 2011 (Wicks, Chapter 647, Statutes of 2022), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are located in land that is zoned for retail, office, or parking (Government Code (GC) § 65912.100-65912.140).
- 3) Establishes, pursuant to SB 35 (Wiener, Chapter 366, Statutes of 2017), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are compliant with local zoning and objective standards that are proposed in local jurisdictions that have not met their regional housing needs allocation (RHNA) (GC § 65913.4).
- 4) Establishes CEQA, which requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (Public Resources Code § 21000, et seq.).
- 5) Establishes the Housing Accountability Act (HAA) which, among other provisions, establishes the following:
 - a) When a proposed housing development project, as defined, complies with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time that the project's application is complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed project upon specified written findings.
 - b) A proposed housing development project, as defined, is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan, as specified.
 - c) A housing development project, as defined, or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the project is consistent, compliant, or in conformity (GC § 65589.5).

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

COMMENTS:

- 1) **Bill Summary.** This bill would make the adaptive reuse of existing buildings for 100-percent affordable housing projects a “use by right.” This means that a local government would not have the discretion to deny the project, nor would the project be subject to review under the CEQA. To qualify, the affordable housing project would need to ensure that all of the households were lower income, and at least half of the units were dedicated to very-low income households. Additionally, the adaptive reuse could not occur on or adjacent to an industrial site. The project proponent would be required to meet specified labor standards, including paying all workers the prevailing wage.

This bill requires that any local source of funding that can be used for the development of affordable housing must include adaptive reuse as an eligible project. This bill also specifies that an agency with control of a local source of funding cannot prohibit or exclude a project proposal solely on the basis that the proposal is for an adaptive reuse project.

This bill is sponsored by the AIDS Healthcare Foundation.

- 2) **Author’s Statement.** According to the author, “[‘Adaptive reuse’] refers to retrofitting and repurposing an existing building to create housing. For example, the Governor’s Project Homekey and Project Roomkey programs have successfully turned hotels and motels into low-income housing.

“AB 1490 will increase implementation of adaptive reuse affordable housing projects by providing developments that meet certain qualifications with incentives, such as guaranteed permit turnaround times and subsidized energy bills. Eligible developments must guarantee 100% of their units be made available for lower income tenants and 50% be made available for the lowest income households.”

- 3) **California’s Housing Crisis.** California faces a severe housing shortage. A variety of causes contributes to the lack of housing production. Recent reports by the Legislative Analyst’s Office 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 as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

A major cause of the housing crisis is the mismatch between the supply of housing and the need for housing. The Statewide Housing Plan adopted by the Department of Housing and Community Development in 2022 found that California needs approximately 2.5 million units of housing, including one million units affordable to lower income households, in order to address this mismatch over the next eight years. That would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.

- 4) **Adaptive Reuse to Housing.** Adaptive reuse is the process of converting an existing non-residential building to housing. The ability to adaptively reuse a building is highly dependent on the initially designed use. For example, uses such as warehouses and big box retail could not functionally be adaptively reused, because their tall ceilings, single stories, and

rudimentary plumbing would need to be completely reconstituted to be appropriate for human habitation. By contrast, office buildings maintain some potential for conversion, because their multi-floor layout is conducive to housing. However, the large-floorplate configuration of most office buildings makes it impossible to provide the necessary light and air that is required for residential units. For example, a recent study of downtown San Francisco's office buildings found that one-third of the buildings could physically be converted to housing.¹ For such conversion to occur, it would also need to be financially attractive to the property owner – something that has increased due to the sharp downturn in the downtown office market since the beginning of the COVID-19 pandemic. However, despite that downturn, in the past two years only one office building has applied for conversion in San Francisco.

The use that is most readily converted to housing are hotels and motels. These uses are already divided into quarters designed for short-term human habitation. Those quarters can readily be converted to housing with the addition of kitchens. The viability of this conversion is visible in the success of Project Homekey, which has created 6,863 units of housing with an expenditure of slightly less than \$2 billion.² The cost of under \$300,000 per unit is substantially less than the current cost to build newly constructed housing.

- 5) **Adaptive Reuse Funding.** In the past three years, the Legislature has taken multiple actions to support adaptive reuse. As mentioned above, Project Homekey has received nearly \$2 billion to convert hotels and motels to housing for the formerly homeless. Additionally, the 2022-2023 budget included \$450 million one-time General Fund (\$200 million in 2022-23 and \$250 million in 2023-24) to convert existing commercial or office space to affordable housing. Finally, AB 1695 (Santiago, Chapter 639, Statutes of 2022) requires any notice of funding availability issued by the Department Housing and Community Development for an affordable multi-family housing loan and grant program to state that adaptive reuse of a property for an affordable housing purpose is an eligible activity.
- 6) **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 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).

¹ <https://www.gensler.com/blog/office-to-residential-conversions-revitalize-san-francisco>

² <https://www.hcd.ca.gov/grants-and-funding/homekey/awards-dashboard>

- 7) **CEQA and Ministerial Review.** CEQA requires the state and local governments to study and mitigate, to the extent feasible, the environmental impacts of proposed projects, providing a key protection for the environment and residents of California. Ministerial approvals remove a project from all discretionary decisions of a local government, including an environmental review under CEQA. Thus, establishing processes to approve certain types of projects ministerially also creates exemptions from CEQA.

A CEQA exemption can provide a tremendous benefit to property owners, developers, local governments and other parties involved in the approval of a project as it allows for the project to be completed in an expedited fashion. In light of the state's ongoing housing crisis, the Legislature has created several exemptions to CEQA that are designed to increase the production of housing. The protection of resources afforded by CEQA is not exempted lightly. The Legislature balances the risk of allowing projects to proceed without a full environmental review by limiting exemptions to projects that comply with scores of objective standards and criteria. These standards and criteria are an expression of the state's values and ensure that exempt projects do not result in harm to public health and safety and the environment.

- 8) **Policy Considerations.** The Committee may wish to consider the following: this bill requires local agencies to ministerially approve projects that meet the criteria specified in the bill. While streamlining the review process may be warranted for these projects, a complete CEQA exemption eliminates an important step in the project review phase. Further, the committee may wish to consider whether these development projects should be limited to infill locations.
- 9) **Committee Amendments.** In order to address the policy considerations noted above, the Committee may wish to consider the following amendments:
- a) Define adaptive reuse projects as projects that are entirely within the envelope of the existing building that will be retrofitted.
 - b) Remove the ministerial approval provisions and workforce provisions associated with ministerial approval from the bill.
 - c) Replace the ministerial approval provision with an expedited approval process that includes the following provisions:
 - i) Make adaptive reuse projects an allowable use on infill parcels that are located near major transit stops.
 - ii) Specify that, for purposes of the HAA, a proposed adaptive reuse project that is consistent with the provisions of the bill shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.
 - iii) Require that if a local agency does not make a timely determination an application shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.
 - d) Make other technical and conforming changes.

10) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 6-1 vote on April 19, 2022.

11) **Arguments in Support.** The Aids Healthcare Foundation writes in support, “[The Aids Healthcare Foundation] has completed 14 adaptive reuse affordable housing developments with over 14000 unites dedicated to [extremely low income] and [very low income] households. In [our] experience, city processes do not always accommodate the urgency that is necessary to get an adaptive reuse affordable housing project up and running so that people who are homeless or at risk of homelessness have a roof over their heads as quickly as possible...

“AB 1490 would require local governments to ease the path to completion for adaptive reuse projects by speeding the entitlement and permitting processes and exempting the project from ordinances regarding parking requirement[s] and floor area rations.”

12) **Arguments in Opposition.** The California Associations of Realtors writes in opposition, “The California Association of REALTORS® (C.A.R.) will OPPOSE AB 1490 (Lee) unless it is amended to expand the proposed CEQA exemption for 100% affordable adaptive reuse projects to entry level market rate housing development intended for owner occupancy by our state low- and moderate-income families.”

REGISTERED SUPPORT / OPPOSITION:

Support

The Aids Healthcare Foundation [SPONSOR]
 California Apartment Association
 East Bay Yimby
 Grow the Richmond
 How to ADU
 Mountain View Yimby
 Napa-solano for Everyone
 Northern Neighbors
 Peninsula for Everyone
 People for Housing Orange County
 Progress Noe Valley
 San Francisco Yimby
 San Luis Obispo Yimby
 Santa Cruz Yimby
 Santa Rosa Yimby
 South Bay Yimby
 Southside Forward
 Urban Environmentalists
 Ventura County Yimby
 Yimby Action

Opposition

City of San Marcos
City of Whittier
City of Whittier

Oppose Unless Amended

California Associations of Realtors

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