

Date of Hearing: January 12, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 682 (Bloom) – As Amended January 3, 2022

SUBJECT: Planning and zoning: density bonuses: cohousing buildings.

SUMMARY: Adds a cohousing building as a category of development eligible for a density bonus. Specifically, **this bill**:

- 1) Provides the following definitions of cohousing:
 - a) Defines “cohousing unit” to mean one or more habitable rooms, not contained within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, and complies with the definition of “guestroom” per the California Building Code.
 - b) Defines “cohousing building” to mean a residential or mixed-use structure, with five or more cohousing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. A cohousing building may include:
 - i) Other dwelling units that are not cohousing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the cohousing building.
 - ii) Incidental commercial uses, provided that those commercial uses are otherwise allowable and are located only on the ground floor or the level of the cohousing building closest to the street or sidewalk of the cohousing building.
- 2) Enables a cohousing building to qualify for the density bonus program if it provides at least one of the following:
 - a) Ten percent of the total square footage of the co-housing building is reserved for lower income households.
 - b) Five percent of the total square footage of the co-housing building is reserved for very low-income households.
- 3) Provides that an applicant for a cohousing building that qualifies for a density bonus automatically receives certain benefits from the local government, and that these benefits do not reduce nor increase the number of incentives or concessions to which the project is otherwise entitled. Specifically, the bill prohibits local governments from requiring:
 - a) A minimum unit size.
 - b) A minimum bedroom requirement.
 - c) The provision of private open space.
 - d) A limit on the maximum density.

- 4) 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) 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.
- 2) Requires cities and counties to adopt a general plan for the physical development of the city or county and authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties.
- 3) Under Density Bonus Law (DBL), requires cities and counties to grant a density bonus and award other incentives or concessions to an applicant for a housing development of five or more units that agrees to set aside a minimum number of units that are affordable to households with low, very-low, or moderate income.
- 4) Authorizes the California Building Standards Commission (BSC) to approve and adopt building standards. Every three years, BSC, in coordination with relevant state agencies, undertakes building standards rulemaking to revise and update the California Building Standards Code (Title 24 of the California Code of Regulations). These building codes serve as the basis for the design and construction of buildings in California.
- 5) Allows a city or county to make modifications to the California Building Standards Code if it makes express findings that such a modification or change is necessary because of local climatic, geological, or topographical conditions.

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

COMMENTS:

- 1) **Author’s Statement.** According to the author, “Despite its potential, California’s major cities and major developers have been slow to embrace co-housing buildings. Stringent density requirements limit the number of units developers can build on an already costly parcel of land. Parking requirements add additional construction costs that can make co-housing financially infeasible, especially for projects that aim to house more than 100 units.

“AB 682 aims to ease the roadblocks that have long stifled the construction of these affordable housing units. By expanding the state’s density bonus law to incentivize co-housing apartments, AB 682 will provide more affordable units without the need for public subsidies. As the state grapples with the housing shortage, AB 682 will help diversify the housing stock, offering both affordable housing and the option for communal living.”

- 2) **California 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 contributed 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 review under the California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 3) **Density Bonus Projects.** DBL was originally enacted in 1979, to help address a shortage of affordable housing. Over 40 years later, the state faces the same if not worse affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for including affordable units in a development, developers receive an increase in density over a local government's zoned density, concessions and incentives, and reductions in parking. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

Local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. Failure to adopt an ordinance does not relieve a local government from complying with DBL. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

- a) Ten percent of the total units for lower income households.
 - b) Five percent of the total units for very low income households.
 - c) A senior citizen housing development or mobilehome park.
 - d) Ten percent of the units in a common interest development for moderate income households.
 - e) Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons.
 - f) Twenty percent of the total units for lower income students in a student housing development, as specified.
- 4) **Bill Summary.** This bill seeks to increase the number of developable units within a building's footprint by creating a new cohousing category within DBL. This bill automatically confers four concessions to cohousing projects, in that they do not need to meet local requirements regarding minimum unit size, minimum bedroom requirements, provision of private open space, and maximum unit density. These automatic concessions

address the fact that most cohousing projects will not meet local requirements, because of the inherently small nature of the units, reliance on required common areas, and the increase in density that comes from a development comprised of smaller units.

This bill is sponsored by cityLAB-UCLA.

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Unit size.** The California Residential Code adopted by the BSC establishes minimum size requirements for habitable rooms, including total square feet (not less than 70 square feet), height requirements, and horizontal dimension requirements. Local governments are authorized to amend the code and apply standards that are stricter than the state minimum standards. For example, a local government may establish a more stringent floor area standard of 80 square feet, but may not adopt a standard of 65 square feet.

It is not entirely clear that cohousing units, as defined in the bill, need to comply with the habitable space standards in the California Residential Code. Additionally, local governments may adopt local amendments to the code that require habitable rooms substantially larger than the minimum standards in the code, potentially compromising the ability to develop cohousing units. The Committee may wish to clarify the size requirements for cohousing units.

- b) **Regional Housing Needs Assessment (RHNA).** The cohousing units envisioned in this bill may be considered “group quarters” under the United States Census definition of a housing unit. As a result, cohousing units developed under this bill may not be eligible to count toward a local government’s RHNA target. In practice, developing a cohousing project on a parcel zoned for multifamily development could require a local government to rezone another parcel to account for the “lost” development capacity as the cohousing units may not count for the purposes of RHNA. The Committee may wish to recommend that the author engage HCD and representatives of local governments to determine if and how cohousing units count for the purposes of RHNA.

6) **Committee Amendments.** To address some of the considerations noted above, the Committee may wish to adopt the following amendments:

- a) **Unit size.** Clarify that a “cohousing unit” is a unit that complies with the habitable space requirements of the California Residential Code.
- b) **Residential Code.** Clarify that the “guest room” definition cited in the bill is the definition in the California Residential Code.

7) **Arguments in Support.** According to cityLAB-UCLA, “AB 682 will create housing units that include all components of a home with the exception of a private kitchen. Instead, in this ‘co-housing’ arrangement, tenants will share a kitchen and dining area much like a college dormitory. Most senior housing developments intentionally design units without kitchens, as access to fire is a hazard for the frail elderly and because communal dining provides important social advantages. Beyond the elderly, other populations are interested in paying lower rent in exchange for sharing a kitchen-dining area with neighbors. Sharing kitchens is desirable for many people who seek social interaction, and it has the distinct advantage of significantly reducing the cost of housing construction and ultimately the rent.”

- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it is set for hearing on January 12, 2022.
- 10) **Previous Legislation.** AB 3173 (Bloom) 2020, This bill would have required micro-unit buildings to be permissible where multifamily residential buildings are permitted in cities or counties over 400,000 people. AB 3173 was held in the Assembly Housing and Community Development Committee.

AB 352 (Santiago), Chapter 400, Statutes of 2017. Prohibited local governments that adopt ordinances permitting efficiency units from placing specified limitations on the units.

REGISTERED SUPPORT / OPPOSITION:

Support

cityLAB-UCLA [Sponsor]
Abundant Housing LA
California YIMBY
East Bay for Everyone
Terner Center for Housing Innovation at the University of California, Berkeley

Opposition

None on file.

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