

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 10 (Wiener) – As Amended June 24, 2021

**SENATE VOTE:** 27-7

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

**SUMMARY:** Authorizes a city or county to pass an ordinance that is not subject to the California Environmental Quality Act (CEQA) to zone any parcel for up to ten units of residential density if the parcel is located in a transit-rich area or an urban infill site. Specifically, **this bill:**

- 1) Authorizes a city or county to pass an ordinance to zone any parcel for up to ten units of residential density if the parcel meets following parameters:
  - a) The parcel is located in either:
    - i) A transit-rich area, defined to mean a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor, as specified.
    - ii) An urban infill site, which is a site that satisfies all of the following.
      - (1) Located in a city if the city boundaries include some portion of either an urbanized area or urban cluster, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.
      - (2) At least 75 percent of the perimeter adjoins parcels that are developed with urban uses.
      - (3) Zoned for residential use or residential mixed-use, or a general plan designation that allows residential use or a mix of residential and non-residential uses, with at least two-thirds of the square footage of the development designated for residential use.
  - b) The parcel is not located in a very high fire hazard severity zone (VHFHSZ), as defined by the Department of Forestry and Fire Protection (CALFire), unless the site has adopted fire hazard mitigation measures required by existing building standards.
  - c) The parcel is not subject to a local restriction enacted or approved by a local voter initiative that designates publicly owned land as open-space land, as defined, or for park or recreational purposes.
- 2) Requires a local agency that adopts an ordinance to rezone sites pursuant to this bill to do all of the following:
  - a) Specify the allowed building height on affected parcels.
  - b) Include a declaration that the zoning is adopted pursuant to this bill, as specified.

- c) Clearly demarcate the areas that are zoned, as specified.
  - d) Make a finding that the increased density is consistent with the city's obligation to affirmatively further fair housing.
  - e) If the ordinance supersedes a zoning restriction established by a local voter initiative, the local agency shall adopt the ordinance by a two-thirds vote. However, a local agency is not permitted to supersede an initiative that designates public open lands, as specified above.
  - f) Adopt the ordinance prior to January 1, 2029.
- 3) Specifies that neither an ordinance adopted pursuant to this bill, nor any resolution, ordinance or any other local regulation adopted to amend the jurisdiction's general plan to be consistent with that ordinance, is a project for purposes of CEQA.
- 4) Specifies, regarding housing development projects on sites rezoned pursuant to this bill that are of more than ten units, the following:
- a) Such projects are prohibited from receiving ministerial or by right approval, or being exempt from CEQA, if the parcel on which it is located was rezoned using the provisions of this bill.
  - b) A project may not be divided into smaller projects in order to produce more than ten units.
  - c) The creation of up to two ADUs or JADUs does not count towards the ten unit cap on total units.
  - d) These provisions do not apply if the site is subsequently rezoned without regard to this bill pursuant to a rezoning that is subject to CEQA. For the purposes of any subsequent rezoning, the environmental review conducted under CEQA must be based on the zoning applicable to the parcel before it was zoned pursuant to this bill.
- 5) Prohibits a local government from utilizing this bill to reduce the density of parcels, or subsequently reducing the density of any parcels zoned pursuant to this bill.
- 6) Provides that the Legislature 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. Therefore, this section applies to all cities, including charter cities.

**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 land use element.
- 2) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans.

- 3) Requires, under CEQA, 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 this action, unless the project is exempt from CEQA.
- 4) Establishes Housing Element law, which determines, through the regional housing needs allocation (RHNA) process, each jurisdiction's fair share of housing, and provides that each city and county must produce, and the Department of Housing and Community Development (HCD) certify, a housing element that convey how the jurisdiction will help fulfill the state's housing goals.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "California's massive housing shortage is driving people into poverty and homelessness and threatening our environment, economy, and diversity. SB 10 provides cities with a powerful, fast, and effective tool to allow light-touch density exactly where it should be: near jobs, near public transportation, and in existing urbanized areas. Specifically, SB 10 allows cities, if they choose, to rezone these non-sprawl locations for up to ten-unit buildings in a streamlined way without CEQA. Given that cities face significantly increased housing production goals under the revised Regional Housing Needs Assessment (RHNA) and are required by the state Housing Element Law to complete rezonings to accommodate these goals, SB 10 is a powerful new tool for cities to use in their comprehensive planning efforts. SB 10 will help ease California's housing crisis, spurred by a statewide shortage of 3.5 million homes, and move the state away from a sprawl-based housing policy and toward a more sustainable, equitable, and effective housing policy."
- 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 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) **The 6th RHNA Cycle.** Housing Element Law requires local jurisdictions to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. 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 5th RHNA Cycle the Southern California Association of Governments (SCAG) received a RHNA of 409,000 – 438,000. By contrast, in the 6th 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.

- 4) **Sustainable Communities Strategies and RHNA.** SB 375 (Steinberg) represents the land use component of the state’s wider strategy to address climate change. The law requires California’s metropolitan planning organizations (MPOs) (which are often also councils of government or COGs) to create a Sustainable Communities Strategy (SCS) as a part of their federally mandated regional transportation program (RTP). The SCS demonstrates how the region will meet its greenhouse gas emissions reduction targets through land use, housing, and transportation strategies. SB 375 also aligned the RHNA cycle with the RTP and SCS planning cycle.

Under Housing Element Law, HCD works with the Department of Finance to develop each region’s projected population growth. Based on these projections, HCD allocates a RHNA share to each MPO/COG. The MPO or COG in turn develops a methodology for distributing its RHNA share among the jurisdictions in its region. The COG’s methodology for distributing housing is required to further state goals promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets provided in the region’s SCS.

A recent working paper by the UC Berkeley Turner Center for Housing Innovation found that, after SB 375, RHNA targeted more housing development with high job proximity in most MPOs. In addition to aligning planning processes, SB 375 also provided limited CEQA exemptions designed to further infill development that is consistent with a regions SCS. Recent revisions to the RHNA process will substantially increase the housing units that COGs must distribute to their jurisdiction in a manner that furthers the region’s SCS which should lead to more infill development in jobs rich areas.

- 5) **Affirmatively Furthering Fair Housing (AFFH) at the State Level.** Anticipating the suspension and rescindment of federal AFFH rules during the Trump administration, California enacted a statewide version of AFFH (AB 686) Santiago, Chapter 958, Statutes of 2018. AB 686 required public agencies to “administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.” It also required cities and counties to consider AFFH in their housing element’s implementation plan. By placing AFFH provisions into housing element law, the California law expanded its reach to all cities and counties, rather than just those that receive federal funding for housing developments. Currently, many local governments are in the process of implementing the new AFFH analysis requirements in their 6th cycle housing elements.
- 6) **CEQA and Zoning.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that the project would not have a significant effect on the environment, the lead agency must prepare a negative declaration or a mitigated negative declaration. If the initial study shows that the project may have a significant effect, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of

reasonable alternatives to the proposed project. Before approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

A zoning ordinance is generally considered a “project” under CEQA if it will have a significant impact on the environment. However, the adoption of local ordinances providing for ADU development are exempt from CEQA. There are also several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.

- 7) **CEQA Exemptions for Housing Projects.** CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines developed by OPR and the Natural Resources Agency, for housing projects. CEQA exemptions can provide a tremendous benefit to property owners, developers, and local governments and other parties involved in the approval of a project as they allow for the project to be completed in an expedited fashion, and insulate the project from CEQA litigation.

Each of these exemptions include a range of conditions, including requirements for prior planning-level review, as well as limitations on the location and characteristics of the site. These conditions are intended to guard against the approval of projects with significant environmental impacts that go undisclosed and unmitigated – which could otherwise endanger workers, residents and the environment.

- 8) **Housing Element Compliance.** In order to adopt a substantially compliant Housing Element, the 6<sup>th</sup> RHNA cycle will require local agencies to identify sites adequate to accommodate significantly increased RHNA numbers. Identifying new sites will require many local agencies to adjust their zoning ordinances in order to accommodate the new RHNA numbers. This will require many local agencies to upzone existing residential sites as well as rezone idle commercial sites.

The way sites are zoned for Housing Element compliance must be done in a manner consistent with state environmental laws such as the SCS which encourages infill and transit oriented development, and state AFFH laws which require local housing decisions to affirmatively further fair housing. Finally zoning ordinances changing the development capacity for a given parcel or district are typically considered projects for the purposes of CEQA and require environmental review.

**Bill Summary.** This bill allows local agencies to pass an ordinance to allow up to 10 units of residential density per parcel. This bill seeks to emulate and further existing SCS goals by limiting the bill’s provisions to parcels located in a transit-rich area or an urban infill site. To expedite this zoning action, the bill exempts these ordinances from CEQA. To ensure that these CEQA exempt zoning ordinances are consistent with state fair housing policies, this bill also requires local agencies to make a finding that the ordinance is consistent with the local agencies’ AFFH obligations. The AFFH finding is essential to ensure that a local agency adopts the ordinance in good faith and not in a manner that would disadvantage certain types of developments, such as developments affordable to persons of low or moderate income.

Finally, in recognition that various CEQA exemptions exist for housing developments in statute, this bill precludes projects of more than 10 units from ministerial (CEQA-exempt) approval if they are on a parcel zoned pursuant to this bill. This provision ensures that if an environmental review is not conducted at the zoning stage, a review will be conducted at the individual project level.

This bill is sponsored by California YIMBY.

9) **Policy Consideration.** The Committee may wish to consider the following:

**Very High Fire Hazard Severity Zones.** This bill allows local agencies to rezone and upzone certain parcels up to a density of 10 units per parcel without conducting a CEQA review. This bill could apply to parcels located in VHFHSZs zones so long as the eventual development on the parcel complies with existing law. Specifically, parcels in these VHFHSZs may be upzoned or rezoned pursuant to this bill if the subsequent development complies with existing building code standards and applicable state fire mitigation requirements. As a practical matter, all development projects are required to comply with the state building code standards as adopted by local agencies, and developments in VHFHSZs are already required to comply with state law imposing fire mitigation requirements. In practice, the fire hazard language in this bill does not increase or decrease the scope of parcels subject to CEQA exempt zoning under this bill. However, urban infill sites and transit rich areas as defined by this bill are seldom located in VHFHSZs, which tend to be more rural or on the perimeter of smaller urban areas.

This bill is an optional tool for local agencies. If the bill is intended to prohibit local agencies from adopting CEQA-exempt zoning ordinances that increase development capacity in VHFHSZs, the author may wish to clarify this provision.

10) **Amendments.** The Committee may wish to consider the following amendments.

a) **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) In proposed 65913.5(a)(1), amend the sentence to read:

Notwithstanding any local restrictions on adopting zoning ordinances enacted by the jurisdiction, ~~including restrictions enacted by a local voter initiative~~, that limit the legislative body's ability to adopt zoning ordinances, including restrictions enacted by local initiative, a local government may adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in one of the following:

ii) In proposed 65913(1)(4)(B) amend the sentence to read:

(B) Any local restriction enacted or approved by a local ~~voter~~ initiative that designates publicly owned land as open-space land, as defined in subdivision (h) of Section 65560, or for park or recreational purposes.

iii) In proposed 65913(b)(4) amend the sentence to read:

If the ordinance supersedes any zoning restriction established by a local ~~voter~~ initiative, the ordinance shall only take effect if adopted by a two-thirds vote of the members of the legislative body.

iv) In proposed 65913.5(c)(2), amend the last sentence to read:

Any environmental review conducted to adopt the subsequent ordinance shall ~~be based on~~ consider the change in the zoning applicable to the parcel or parcels before they were zoned or rezoned pursuant to the ordinance adopted under this section.

v) In proposed 65913.5(e)(1)(b), amend the sentence to read:

It has average service intervals of no more than 20 minutes during the hours of 6 a.m. to 10 ~~a.m.~~ p.m., inclusive, on Monday through Friday

vi) In proposed 65913.5(f), amend the sentence to read:

(f) The Legislature finds and declares that ~~ensuring the adequate production of affordable~~ the provision of adequate housing, in light of the severe shortage of housing at all income levels in this state, 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. Therefore, this section applies to all cities, including charter cities.

b) **Committee Amendment.** The Committee may wish to adopt a technical amendment that clarifies that even when an ordinance is adopted by a 2/3rds vote it may not rezone or upzone a parcel that is subject to a local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land, as defined, or for park or recreational purposes.

11) **Double Referred.** This bill is double referred to the Assembly Housing and Community Development Committee, where it was heard on June 22, 2021 and passed on a 6-1 vote.

12) **Arguments in Support.** California YIMBY writes in support, “SB 10 is a simple bill that authorizes local governments to rezone neighborhoods for increased housing density, up to ten homes per parcel. This authorization will require that a legislative body pass a resolution to adopt the plan and exempts that zoning action from being considered a project under the California Environmental Quality Act. To be eligible for this local action, an area must be urban infill, consistent with the definition used in Senate Bill 35 (2017) or be near high quality public transportation or a job- rich area. When the local government passes this resolution, it can choose whether the individual projects will be ministerial/by right or subject to discretionary approval.”

13) **Arguments in Opposition.** The City of Santa Monica writes in opposition, “While this measure seeks to address California’s housing crisis by providing local governments with an additional tool to increase housing production in their jurisdictions it fails to ensure local governments are not able to overturn the democratic will of their residents. For example, in 2014, voters in the City of Santa Monica approved Measure LC which was designed to require voter approval for any alternate or new developments on the site of the former Santa

Monica Airport, except parks, open space and recreational areas. Such initiatives are one of the most direct means that voters have of expressing their will for their communities and allowing an elected body to overturn these initiatives would be an affront to the democratic process.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

AARP  
Abundant Housing LA  
Association of Bay Area Governments (ABAG)  
Bay Area Council  
Bridge Housing Corporation  
Calchamber  
California Apartment Association  
California Association of Realtors  
California Community Builders  
California Hispanic Chamber of Commerce  
California Rental Housing Association  
California State Association of Electrical Workers  
California State Pipe Trades Council  
California Yimby  
California Building Industry Association  
Circulate San Diego  
City and County of San Francisco  
City Council Member, City of Gilroy  
Council of Infill Builders  
County of Monterey  
Facebook  
Fieldstead and Company, INC.  
Gilroy City Council Member Office, Councilmember Zack Hilton  
Greenbelt Alliance  
Habitat for Humanity California  
Hollywood Chamber of Commerce  
Housing Action Coalition  
International Union of Elevator Constructors  
League of Women Voters of California  
Local Government Commission  
Los Angeles Business Council  
Mayor of City & County of San Francisco London Breed  
Metropolitan Transportation Commission  
Modular Building Institute  
Sacramento Area Council of Governments  
San Francisco Bay Area Rapid Transit District (BART)  
San Francisco Yimby  
Santa Barbara Women's Political Committee  
Silicon Valley At Home (SV@HOME)  
Silicon Valley Community Foundation



Silicon Valley Leadership Group  
San Francisco Bay Area Planning and Research Association  
The Central Valley Urban Institute  
The Two Hundred  
Tmg Partners  
United Way Bay Area  
Western States Council Sheet Metal, Air, Rail and Transportation

**Opposition**

Alameda Citizens Task Force  
Albany Neighbors United  
Bel Air Skycrest Property Owners' Association  
Burton Valley Neighborhoods Group  
California Cities for Local Control  
Catalysts  
Ceja Action  
Center for Biological Diversity  
Center on Race, Poverty & the Environment  
City of Camarillo  
City of Jurupa Valley  
City of Lomita  
City of Palos Verdes Estates  
City of Rancho Palos Verdes  
City of Santa Monica  
Coalition for San Francisco Neighborhoods  
Communities for A Better Environment  
Environmental Defense Center  
Federation of Hillside and Canyon Associations  
Grayburn Avenue Block Club  
Howard Jarvis Taxpayers Association (HJTA)  
Indivisible 43  
Indivisible California Green Team  
Indivisible Marin  
Indivisible Normal Heights  
Indivisible Ross Valley  
Indivisible San Jose  
Las Virgenes-malibu Council of Governments  
Latino Alliance for Community Engagement  
Mangan Park Neighborhood Association  
Miracle Mile Residential Association  
New Livable California Dba Livable California  
Physicians for Social Responsibility - Los Angeles  
Poder  
Progressive Democrats of America  
Progressive Democrats of Santa Monica Mountains  
Redondo Beach; City of  
Riviera Estates Association  
Riviera Homeowners Association

Rooted in Resistance  
Save Lafayette  
Sf Planning Association for The Richmond  
Sherman Oaks Homeowners Association  
Sierra Club  
Social 350  
South Bay Cities Council of Governments  
South Shores Community Association  
Sunnyvale United Neighbors  
Sunset-parkside Education and Action Committee (SPEAK)  
Sustainable Tamalmonite  
Temecula Valley Neighborhood Coalition  
The Valley Village Homeowners Association  
Torrance; City of  
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville  
United Neighbors  
West Pasadena Residents' Association  
Westwood Hills Property Owners Association  
Westwood South of Santa Monica Blvd. Homeowners Association

**Oppose Unless Amended**

Aids Healthcare Foundation  
California Housing Consortium  
California Housing Partnership Corporation  
City of Agoura Hills  
Endangered Habitats League  
Housing California  
Planning and Conservation League

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958