

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 478 (Wiener) – As Amended June 24, 2021

SENATE VOTE: 29-5

SUBJECT: Planning and Zoning Law: housing development projects.

SUMMARY: Establishes minimum floor-to-area ratio (FAR) standards on housing development projects of three to ten units. Specifically, **this bill:**

- 1) Prohibits a local agency from requiring the following for housing development projects:
 - a) For a housing development project consisting of three to seven units, imposing a FAR standard that is less than (1.0) and imposing a lot coverage requirement that precludes the project from achieving a FAR of (1.0).
 - b) For a housing development project consisting of eight to ten units, imposing a FAR standard that is less than (1.25) and imposing a lot coverage requirement that precludes the project from achieving a FAR of (1.25).
- 2) Prohibits a local agency from denying a housing development project of three to ten units solely on the basis that the area of the proposed lot does not meet the local agency's requirements for minimum lot size.
- 3) Limits the protections in this bill to housing development projects that meet all of the following:
 - a) The project is located in a multifamily residential zone or a mixed-use zone, and is not located in either of the following:
 - i) Within a single-family zone.
 - ii) Within a historic district or property included in the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
 - b) The project is located on a legal parcel or parcels in one of the following:
 - i) A city whose city boundaries include some portion of either an urbanized area or urban cluster.
 - ii) An unincorporated area, and the parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster.
- 4) Clarifies that nothing in the bill shall be construed to prohibit a local agency from imposing any zoning or design standards, including, but not limited to, building height and setbacks, on a housing development project of three to ten units other than zoning or design standards that

establish floor-to-area ratios, lot size requirements, or lot coverage standards that are expressly in conflict with the standards of the bill.

- 5) Declares void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document of a homeowner's association, if it effectively prohibits or unreasonably restricts an eligible housing development project from using the FAR standards under the bill.
- 6) Requires the Department of Housing and Community Development (HCD) to notify a local government, and allows HCD to notify the state Attorney General, if the local government is in violation of the requirements in this bill.
- 7) Provides that the Legislature finds and declares that 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 not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution and that this bill applies to all cities including charter cities.

EXISTING LAW:

- 1) Allows a city or a county 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, pursuant to Planning and Zoning Law, 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.
- 3) 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.

FISCAL EFFECT: According to the Senate Appropriations Committee:

HCD estimates costs of approximately \$137,000 annually for 0.75 in staff time (0.5 PY HCD Representative I and 0.25 PY Attorney III) to consult with cities and counties, develop guidance, train staff, review existing programs, perform audit activities, and refer violations to the Attorney General. (General Fund)

HCD anticipates additional costs of approximately \$35,000 annually to reimburse the Department of Justice for litigation costs resulting from referrals of violations to the Attorney General, assuming 200 hours of attorney time are required per case. (General Fund).

COMMENTS:

- 1) **Author's Statement.** According to the author, "SB 478 ensures that local and state housing laws are not undermined by hyper-restrictive zoning requirements that make it practically impossible to build multi-family buildings in areas zoned to allow them. Specifically, SB 478 sets minimum standards on floor area ratios (FAR) for land already zoned for 3-10 buildings,

commonly known as missing middle housing. Excessively low FAR and lot coverage requirements, coupled with large minimum lot sizes, are tools that numerous cities use to undermine their own zoned density — in other words, a city can zone for multi-family, but extreme FAR or lot size requirements make it effectively impossible, both financially and design-wise, to actually build. In fact, with these abusive requirements on the books, multi-family buildings are so infeasible, the end result is the development of a large single family home instead. As a result, cities are able to use this loophole to prohibit multi-family housing otherwise authorized by local or state zoning law, and only build single family homes. SB 478 will be an effective tool to combat our housing shortage by ensuring there is truth in zoning, by allowing the development of 3-10 unit buildings in places already approved for them.”

- 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) **Planning for and Approval of Housing.** Planning for and approving new housing 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.

Zoning regulations and entitlement processes can restrict and shape development. For example zoning ordinances may establish the maximum densities of housing units, maximum heights, minimum numbers of required parking spaces, required setbacks, maximum lot coverage ratios, and maximum floor area ratios. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

- 4) **Local Regulations on Building Size.** There are numerous ways local agencies control the development capacity of parcels within their jurisdiction. The zoned density establishes the development capacity ceiling for parcels within that zone. For example, a zoning district that allows one unit per 5,000 square feet (8-10 units per acre) would limit the development capacity of any parcel that is less than 10,000 square feet to the construction of a single dwelling unit. In addition to the zoning density, local agencies may adopt a variety of design constraints and standards that further limit the development capacity of an individual parcel. This bill specifically addresses three existing development standards.

- a) ***Floor-to-Area-Ratios (FAR)***. The FAR is a city planning term of art that represents the size of a building divided by the size of the lot. FARs are one of the many standards local agencies use to control the “bulk” of new structures; other common standards include maximum building height, required setbacks, and maximum lot coverage. Each of these approaches can limit the amount of housing that can be built on a lot, even when the zoning would otherwise permit it. For example, a FAR of 0.3 would limit housing on a 5,000 square foot lot to 1,500 square feet – essentially precluding more than one or two units from being developed, even if the zoning allowed for greater density. In contrast, a FAR of 1.0 for a 5,000 square foot lot would allow a development to include 5,000 square feet of usable space (provided that setbacks and other regulations are complied with).
- b) ***Minimum Lot Size***. Local agencies may also specify the minimum size that a parcel, or “lot,” must be for housing to be built on it. For example, the zoning code for the City of Davis establishes a minimum lot size of 7,500 square feet for lots in the city’s Residential High Density (R-HD) district; in the city’s R-HD district a developer is required to obtain a conditional use permit in order to develop a parcel that is less than 7,500 square feet. This zoning district allows for density of as much as one-unit per 500 square feet or nearly 90 units per acre. However, the minimum lot size requirements could preclude housing development on any lot smaller than 7,500 square feet despite the allowed density for the zoning district.
- c) ***Maximum Lot Coverage***. Local agencies also establish maximum lot coverage ratios. These ratios either independently or in conjunction with FAR and height requirements also function as a limit on development intensity. For example, the city of Sacramento restricts lot coverage in the city’s R-1 zones (single unit and duplex dwellings) to a maximum of 40% or 2,500 square feet whichever is greater, provided that the coverage shall not exceed 50% of the lot size. In the city’s R-3 Zones (multi-unit dwellings) the lot coverage ratio is a maximum of 60%. These ratios coupled with a maximum height of 35 feet and the applicable FAR control the size of the development possible on a given lot.
- d) ***Development Standards in Context***. The cumulative effect of the controls noted above, can ultimately limit the development capacity of an existing parcel. For example, the zoning code for City of Glendale establishes a range of zoning districts. A medium density zoning district in the City of Glendale, R-2250, allows one unit per 2,250 square feet of lot area (approximately 20 units per acre). Lots in Glendale’s R-2250 districts are also restricted by a maximum FAR of (0.85), are subject to a maximum lot coverage ratio of 50%, and are limited to a total height 36 feet (or 3 stories). A parcel with 22,500 square feet of buildable area located in Glendale’s R-2250 district would be subject to the following conditions:
- Under existing law, a developer seeking to construct a 10-unit complex on the lot described above would be limited in the following ways:
- i) The maximum height of the development is limited to 36 feet.
 - ii) The maximum livable square footage that can be built is 19,125 square feet (FAR (0.85)).

iii) The maximum buildable area on the parcel is 11,250 square feet (50% of the total parcel).

Under this bill, a developer seeking to construct a 10-unit complex on the lot described above would be limited in the following ways

i) The maximum height of the development is limited to 36 feet.

ii) The maximum livable square footage that can be built is 28,125 square feet (FAR (1.25))

iii) The maximum buildable area on the parcel is 11,250 square feet (50% of the total parcel). ***SB 478 would only supersede the maximum lot coverage if the existing limit precludes the development of 10 units.***

The FAR and minimum lot coverage requirements in City of Glendale's zoning code do not physically preclude the development of up to 10 units on the lot described above, either with the existing FAR in effect (0.85) or the FAR that would apply to the project under this bill (1.25). A three story development at the proposed FAR of (1.25) would allow three stories with 9,375 square feet of livable space per story, which could be built within the existing buildable area allowed for the parcel by the 50% maximum lot coverage standard (11,250 square feet). In practice, in the example provided above, this bill would gently increase the total development capacity but it would not increase the zoned density established by the local jurisdiction. The bill would allow a development that includes more square feet of livable area, possibly allowing for 2-3 bedroom units instead of one-bedroom units, but the building would still be restricted to being constructed within the existing developable footprint for the parcel per the existing requirements established by the city.

The author has noted several examples of city codes that establish an effective FAR of (0.3). In the example above the existing parcel with a FAR of 0.3 would limit the design capacity of the development to less than 7,000 square feet of livable area, which could effectively preclude the development of 10 units even though the parcel is technically zoned to allow 10 units. Finally, the application of a slightly more restrictive lot coverage ratio, such as a maximum 40% lot coverage ratio could also limit development capacity by significantly restricting the buildable area.

In jurisdictions with FAR, height, and lot coverage standards that are designed to facilitate development at the zoned density, the provisions of this bill will have a minimal impact. However in jurisdictions where FAR and lot coverage standards, coupled with the local height requirements limit development capacity to a density far below the level allowed in the underlying zoning, this bill could have a measureable impact.

Should local agencies artificially limit development capacity by establishing a FAR or lot coverage ratio that effectively negates the zoned density for a given parcel?

- 5) **Implementation and Enforcement.** This bill contains two strategies to facilitate its implementation and enforcement. First, it overrides the ability of a homeowners association to enforce rules that effectively prohibit an eligible housing development project from using the FAR standards under the bill. Second, this bill would add its provisions to the list of housing laws that the Attorney General is empowered to enforce. The list already includes

enforcement of housing element law, as well as enforcement of the Housing Accountability Act, “No Net Loss” provisions requiring local governments to ensure adequate sites for housing to be available at all times for each income levels, Density Bonus Law, and prohibitions on housing discrimination.

- 6) **Bill Summary.** This bill seeks to increase the production of medium-density housing by removing barriers to development. It would do so by establishing a minimum FAR of (1.0) for a housing development project consisting of three to seven units, and (1.25) for a housing development project consisting of eight to ten units. The bill also prohibits the enforcement of maximum lot coverage requirements that preclude building at the FAR established in the bill. These requirements would only apply on sites that are not zoned for single family, are not in historic districts, and are within or proximal to existing urban areas. This bill would also preclude a local government from denying a housing development project located on an existing legal parcel solely on the basis that the lot area of the proposed lot does not meet the local agency’s requirements for minimum lot size.

This bill is sponsored by California YIMBY.

- 7) **Committee Amendment.** The Committee may wish to consider a technical amendment. Amend proposed Section 65913.11(c)(2) to read:

Notwithstanding paragraph (1), a local agency may not impose a lot coverage requirement that would *physically* preclude a housing development project that meets the requirements established in subdivision (b) from achieving the floor-to-area ratio allowed in subdivision (a).

- 8) **Arguments in Support.** California YIMBY writes in support, “This bill would allow local governments to regulate FAR and minimum lot sizes in the ways they deem most appropriate for their communities, but it puts guardrails on this right to prevent abuse against very restrictive standards that increase housing costs and exacerbate segregation. This bill would not require local governments to allow multifamily housing where they do not allow it. It also does not change other standards, such as height or setbacks. It just puts important guardrails on design standards so that housing that is planned for is not undermined by hyper-restrictive design rules.”
- 9) **Arguments in Opposition.** The City of Cupertino writes in opposition, “We believe that SB 478 extends well beyond the reach of land use issues for the state. California is made up of hundreds of communities, each with their own characteristics, history, and future needs that go in to determining how best to approach land-use decisions. What is appropriate for one community may not be appropriate for all communities, which is why land use decisions, such as minimum lot sizes and FARs are best decided at the local level. In some communities, the FARs suggested by this bill may be appropriate; however, they will not be appropriate in all communities. Locally elected officials, with input from their residents and local stakeholders, are in the best position to determine what is best for their community.”
- 10) **Double Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 7-1 vote on June 22, 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

California YIMBY (Sponsor)
Abundant Housing LA
Bay Area Council
California Apartment Association
California Building Industry Association
Circulate San Diego
Fieldstead and Company, INC.
Greenbelt Alliance
Greenlining Institute
Habitat for Humanity California
Housing Action Coalition
Lisc San Diego
Local Government Commission
Modular Building Institute
San Francisco Bay Area Planning and Research Association

Opposition

Alameda Citizens Task Force
Albany Neighbors United
California Cities for Local Control
Catalysts
City of Cupertino
City of Torrance
Grayburn Avenue Block Club
Indivisible Ca-43
Indivisible California Green Team
Indivisible Marin
Indivisible Normal Heights
Indivisible Ross Valley
Indivisible San Jose
Lafayette; City of
Latino Alliance for Community Engagement
Mission Street Neighbors
New Livable California DbA Livable California
Progressive Democrats of America
Progressive Democrats of Santa Monica Mountains
Riviera Homeowners Association
Rooted in Resistance
Social 350
South Shores Community Association
Sustainable TamalmonTE

Oppose Unless Amended

California Association of Realtors
California Land Title Association
California State Association of Counties

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