Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 2085 (Bauer-Kahan) – As Amended April 9, 2024

SUBJECT: Planning and zoning: permitted use: community clinic

SUMMARY: Requires local governments to ministerially approve an application for a community clinic that provides reproductive health services and meets specified criteria. Establishes that the development of a community clinic shall not be considered a "project" for purposes of the California Environmental Quality Act. Specifically, **this bill**:

1) For purposes of this bill, defines the following terms:

    a) "Development" means the construction, change or modification in construction or building services equipment, or the reconstruction or renewal of any part of an existing building, structure, or building service equipment for the purpose of operating a community clinic that provides reproductive health services, as specified.

    b) "Development proponent" means an applicant who submits an application to a local agency for a development as defined by this bill.

    c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

    d) "Objective design review standards" means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development proponent and the public official before submission.

2) Requires that the development of a community clinic that provides reproductive health services shall be a permitted use and requires a local agency to review an application for the development of the community clinic on an administrative, nondiscretionary basis if it meets all of the following:

    a) The development is on a parcel within a zone where office, retail, health care, or parking are a principally permitted use.

    b) The development is for a community clinic licensed pursuant to Section 1204 of the Health and Safety Code that provides reproductive health services, as defined.

    c) The development complies with the applicable minimum construction standards of adequacy and safety for the physical plant of primary care clinics found in the latest edition of the California Building Standards Code, as specified.

        i) A primary care clinic may establish compliance with this requirement by submitting written certification, as specified, from a licensed architect or a written statement from a local building department that the development is in compliance with these standards.

d) The development meets all of the local agency's objective design review standards in effect at the time that the development application is submitted to the local agency.

e) The development would not require the demolition of a historic structure that was placed on a national, state, or local historic register.

f) The development would not require the demolition of housing.

3) Requires, in determining whether a development is consistent with the objective standards specified in 2) above, the development to be subject only to the plans, ordinances, policies, regulations, and standards adopted and in effect when the application is submitted.

4) Requires a local agency that receives an application for a development under this bill to approve or deny the application within 60 days of submission of the application, subject to all of the following:

a) If the local agency determines that the development is in conflict with any of the objective planning standards specified in 2) above, then all of the following apply:

i) The local agency shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards.

ii) The development proponent may submit materials to the local agency to address and resolve the conflict identified pursuant to this bill.

iii) Within 60 calendar days after the local agency has received the materials submitted address the conflict identified in ii) above, the local agency shall determine whether the development as supplemented or amended is consistent with the objective planning standards.

b) If the local agency denies the application, the local agency shall provide a process for the development proponent to appeal that decision in writing to the governing body of the local agency. The local agency shall provide final written determination on the appeal no later than 60 calendar days after receipt of the development proponent's written appeal.

c) The timeline outlined in this bill does not preclude a development proponent and a local agency from agreeing to an extension of any time limit provided by the bill.

5) Provides that the approval of a development subject to ministerial approval under this bill shall not be considered a "project' for purposes of the California Environmental Quality Act (CEQA).

6) Provides, for purposes of enforcing the provision of the bill, the following:

a) The development proponent may bring an action to enforce this bill. The court shall grant a prevailing plaintiff under this paragraph reasonable attorneys' fees and costs, except the court shall not award reasonable attorneys' fees if the court finds, under extraordinary circumstances, that awarding reasonable attorneys' fees would not further the purposes of this bill.

b) The Attorney General shall have the unconditional right to bring an enforcement action against a local agency that is in violation of this bill. In any suit brought to enforce this section, the Attorney General shall have the unconditional right to intervene, as specified.

7) 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.~~.~~

8) Makes findings and declarations that reproductive freedom, including the right to abortion and contraception, is a fundamental constitutional right. Protecting this right and ensuring access to reproductive health services, as set forth in this bill, is a matter of statewide concern and is not a municipal affair and applies to all cities, including charter cities.

EXISTING LAW:

1) Prohibits the state from denying or interfering with an individual's reproductive freedom in their decisions, which includes the fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. [California Constitutions (CONS) § 1.1]

2) Defines a "local agency" as a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state. [Government Code (GOV) § 6600]

3) Defines "reproductive health services" as reproductive health services provided in a hospital, clinic, physician's office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. [Penal Code (PEN) § 423.1]

4) Establishes regulations that prescribe the kinds of services that may be provided by clinics in each category of licensure and minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and minimum standards for providing the services offered. These minimum standards shall be based on the type of facility, the needs of the patients served, and the types and levels of services provided. [Health and Safety (HSC) § 1226]

5) Requires the Office of Statewide Health Planning and Development, in consultation with the Community Clinics Advisory Committee, to prescribe minimum construction standards of adequacy and safety for the physical plant of clinics as found in the California Building Standards Code. (HSC § 1226)

6) Defines "community clinic" to means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a 501(c)(3) nonprofit corporation shall operate a community clinic. No natural person or persons shall operate a community clinic. (HSC § 1204)

7) Establishes that projects approved on a ministerial basis by public agencies are not subject to the California Environmental Quality Act. (PRC §21080)

8) Establishes that the use of the words "certify" or "certification" by a licensed architect constitutes an expression of professional opinion regarding those facts or findings that are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. This section of law is not intended to alter the standard of care ordinarily exercised by a licensed architect. [Business and Professions Code (BPC) § 5536.26]

9) Requires the court to permit a nonparty to intervene in the action or proceeding if either the provision of law confers unconditional right to intervene or the person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. [Code of Civil Procedure (CCP) § 387]

10) Authorizes specified housing development projects to be a use by right on specified sites zoned for retail, office, or parking, pursuant to AB 2011. (Government Code Section 65912.100)

11) Provides that real estate assets that receive a grant from the Behavioral Health Continuum Infrastructure Program shall be deemed consistent and in conformity with any applicable local plan, standard, or requirement, and allowed as a permitted use within the zone in which the structure is located, and shall not be subject to a conditional use permit, discretionary permit, or to any other discretionary reviews or approvals. [Welfare and Institutions Code (WIC) § 5960.3)

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

COMMENTS:

1) **Bill Summary.** This bill requires a local government to ministerially approve a development that construct a community clinic that provides reproductive health services, under specified circumstances. To be eligible for ministerial approval, the development must comply with all of the following:
   a. Is located in a zone where office, retail, health care, or parking are a principally permitted use;
   b. Meets minimum construction standards;
   c. Meets objective design review standards at the time the application is submitted; and,
   d. Would not require the demolition of a historic structure or the demolition of housing.

   These types of development shall not be considered "projects" for the purposes of CEQA.

   Upon receiving an application to develop a community clinic providing reproductive health services, the local agency shall have 60 days to approve or deny the application. If the local agency denies the application, the local agency shall provide written documentation that explains which standard or standard the development conflicts with and the reasons why the development conflicts with that standard. The development proponent may submit materials to the local agency to address and resolve the conflict. The local agency then has 60 days to review the supplemented or amended development to determine if it is consistent with the

objective planning standards at the time of application.

If after providing material to address the conflicts with the objective planning standards the city or county still denies the development, the local agency shall provide a process for the development proponent to appeal that decision. The local agency shall provide a final written determination on the appeal no later than 60 days after the receipt of the development proponent's written appeal.

The development proponent and the Attorney General may bring an action against a local agency that is in violation of this bill. The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs, unless awarding reasonable attorneys' fees would not further the purposes of this bill.

The bill is sponsored Planned Parenthood, Training in Early Abortion for Comprehensive Healthcare, and Reproductive Freedom for All.

2) **Author's Statement**. According to the author, "Reproductive healthcare is desperately needed, especially in healthcare deserts. It is challenging enough to build them, and we are seeing local opposition delay and block clinic construction without justification. To effectively protect reproductive care, we must ensure our legal protections are accompanied by physical access. AB 2085 creates streamlining for development of community clinics in areas already zoned for commercial or medical facilities. This care is desperately needed, and these providers will deliver a range of medical services outside of normal business hours and primarily to medical patients. This is an equity issue and a reproductive rights issue. Our state cannot promise abortion rights on the one hand but deny access on the other. AB 2085 will make our values a reality."

3) **Planning and Zoning Law.** State law provides powers and duties for cities and counties regarding land use. Each city and county must prepare and periodically update a comprehensive, long-range general plan to guide future planning decisions. The general plan has seven mandatory elements: land use, circulation, housing, conservation, open-space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements. Cities and counties may adopt optional elements that address issues of their choosing, and once adopted, those elements have the same legal force as the mandatory elements. The general plan must be "internally consistent," which means the various elements cannot have conflicting information or assumptions.

Although state law spells out the plans' minimum contents, it also says local officials can address these topics to the extent to which they exist in their cities and counties, and with a specificity and level of detail reflecting local circumstances. Similarly, state law doesn't require cities and counties to regularly revise their general plans (except for the housing element, which must generally be revised every eight years).

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff "ministerially" or without further approval from elected officials, but most large housing projects require "discretionary" approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the

local planning commission and public notice and may require additional approvals.

The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Public notice must be given at least 10 days in advance of hearings where most permitting decisions will be made. The law also allows residents to appeal permitting decisions and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process, which can entail appeals of decisions by planning officials to the planning commission and the city council or county board of supervisors.

Local land use policies and decisions, including zoning, specific plans, development agreements, and subdivision map approvals, of general law cities (and counties) must be consistent with their general plan. However, charter cities are exempt from many provisions in law that apply to local planning and zoning ordinances, except where state law specifically states it applies to charter cities. Charter cities may also adopt an ordinance or charter amendment that requires compliance with state planning and zoning laws, including the requirement for consistency. Approximately one-quarter of charter cities have adopted such a requirement.

City or county zoning ordinances, including charter cities, must be consistent with the general plan. To comply with this requirement, a county or city must adopt a general plan, and ensure the various land uses the ordinance authorizes are compatible with the objectives, policies, general land uses, and programs the plan specifies. Any resident or property owner in the city or county can bring an action in superior court to enforce compliance within 90 days of a new zoning ordinance or amendment's enactment. If a zoning ordinance becomes inconsistent with a general plan due to an amendment to the general plan, or any of its elements, the city or county must amend the zoning ordinance in a reasonable time so it is consistent with the amended general plan.

4) **By-Right Approval.** Historically, the ministerial approval process has been used to aid the approval of affordable housing projects or emergency shelters by limiting local government's land use discretion and requiring their approval of eligible projects. Recently, the Legislature passed and the Governor signed AB 531 (Irwin), Chapter 789, Statutes of 2023, which allowed permanent supportive housing developments funded by the Behavioral Health Infrastructure Bond Act of 2024 be subject to a streamlined ministerial approval process. These types of projects are intended to serve Californians experiencing homelessness or at risk of homelessness with severe behavioral challenges. A subset of developments that fall under the category of a behavioral health treatment and residential setting – including children's residential crisis programs, peer respite, children's and adult substance use disorder residential programs, recovery housing, short-term residential therapeutic programs, and social rehabilitation programs – are also eligible for by right streamlining and are exempt from CEQA on residential, office, parking, and retail sites.

AB 2085 would require a by-right approval for community clinic projects that provide reproductive health services. The by-right approval process would ensure that community clinics are approved in communities that have been resistant or are opposed to allowing this specific type of development.

5) **Policy Considerations.** AB 2085 requires that a community clinic be a permitted use and a local agency review an application for the development. The bill includes school districts, special districts, authorities, agencies, and other municipal corporations in the definition of "local agency." However, the aforementioned agencies rarely, if ever, have land use authority. The author may wish to consider refining the definition of "local agency" to mean a county, a city, whether general law or chartered, or a city and county.

6) **Related Legislation**. AB 1801 (Jackson) allows a supportive housing development utilizing the by-right process in current law to include administrative office space in the nonresidential floor area of the development, up to certain limits. This bill is pending in this Committee.

   AB 2314 (Lee) deems a tribal housing development that is located on a site owned in fee simple by the tribe an allowable use if it satisfies specified requirements, including that it is located on an infill lot and it is not located on an environmentally sensitive site, as specified. The bill would authorize a tribal housing development subject to these provisions to be eligible for the streamlined, ministerial approval process, as specified, and would prohibit a local government from imposing a maximum density requirement on a development subject to these provisions. This bill is in the Assembly Committee on Housing and Community Development.

7) **Previous Legislation**. AB 531 (Irwin), Chapter 789, Statutes of 2023, creates the Behavioral Health Infrastructure Bond Act of 2024 (Bond) to, subject to voter approval, authorize $6.380 billion in general obligation (GO) bonds to finance permanent supportive housing for veterans and others, as well as, unlocked and locked behavioral health treatment and residential settings for individuals experiencing homelessness or at risk of homelessness with severe behavioral health challenges. Allows for by right streamlined, ministerial review for capital projects funded by the bond.

   SB 423 (Wiener), Chapter 778, Statutes of 2023, extends the sunset, amends the labor standards, and makes other changes to SB 35 (Wiener), Chapter 366, Statutes of 2017.

   AB 2011 (Wicks), Chapter 647, Statutes of 2022 required housing development projects to be a use by right on specified sites zoned for retail, office, or parking.

   AB 2162 (Chiu), Chapter 753, Statutes of 2018 created a by right approval process for developments that are 100% affordable to lower income households that restrict at least 20% of the units to supportive housing for people experiencing homelessness.

   SB 35 (Wiener), Chapter 366, Statutes of 2017 created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet regional housing allocation numbers.

8) **Arguments in Support**. Training in Early Abortion for Comprehensive Healthcare writes in support, "The right to access healthcare is increasingly determined by where someone lives. This is particularly true in the realm of reproductive care. States across the country are taking unprecedented steps to penalize and bar access to abortion. With Roe now fully overturned, abortion access for 25 million women is either criminalized or limited. Many of these people will travel to California, increasing demand for abortion access and putting pressure on the existing access to care. Though California has enacted extensive protections for abortion

within the state, there are still major gaps when people come to California or when Californians themselves seek healthcare.

"One of the key barriers is access to a clinic. In many healthcare deserts, clinics are an hour or more away, with limited availability for appointments. While the demand for reproductive care, family planning, and the basic healthcare these clinics provide is only increasing, clinic construction is being blocked without justification, thus limiting access to basic healthcare and reproductive care. Health organizations are trying to keep up with the demand by expanding, but are often blocked by local opposition, bad faith lawsuits, and unnecessary regulatory hurdles.

"AB 2085 streamlines the development of needed community clinics. By streamlining the process for development, the bill will expand healthcare access in California for our most vulnerable communities."

9) **Arguments in Opposition**. None on file.

10) **Double-Referral.** This bill is double-referred to the Assembly Natural Resources Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American College of Obstetricians and Gynecologists District Ix
American Nurses Association/California
Associated General Contractors
Essential Access Health
National Health Law Program
Planned Parenthood Affiliates of California
Reproductive Freedom for All
SF Black and Jewish Unity Coalition
Training in Early Abortion for Comprehensive Health Care
Women's Foundation California

Opposition

None on file.

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