

SENATE THIRD READING
SB 10 (Wiener)
As Amended July 5, 2021
Majority vote

SUMMARY

Authorizes a city or county to pass an ordinance that is not subject to the California Environmental Quality Act (CEQA) to upzone 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.

Major Provisions

- 1) Authorizes a city or county to pass an ordinance to zone any parcel for up to ten units of residential density, notwithstanding any local or voter-mandated restrictions on zoning ordinances, as long as the parcel meets the following geographic parameters:
 - a) The parcel is located in either a transit-rich area, as defined, or an urban infill site, as specified;
 - b) The parcel is not located in a high or very high fire hazard severity zone, as defined by the Department of Forestry and Fire Protection (CALFire), except for sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development; and
 - c) The parcel is not 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.
- 2) 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.
- 3) Requires a local agency that adopts an ordinance pursuant to this bill to do all of the following:
 - a) Make a finding that the increased density is consistent with the city's obligation to affirmatively further fair housing; and
 - b) If the ordinance supersedes a zoning restriction established by a local initiative, adopt the ordinance by a two-thirds vote.
- 4) Specifies, regarding housing development projects on sites rezoned pursuant to this bill that are of more than ten units, that such projects are prohibited from receiving ministerial or by right approval, or being exempt from CEQA, if it the parcel on which it is located was rezoned using the provisions of 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 upzoned pursuant to this bill.

- 6) Includes a sunset date such that a local government cannot pass an ordinance discussed in 1) after January 1, 2029. Specifies that the ordinances themselves may extend beyond that date.

COMMENTS

California Housing Crisis: California is in the midst of a housing crisis. Only 27% of households can afford to purchase the median priced single-family home – 50% less than the national average. Over half of renters, and 80% of low-income renters, are rent-burdened, meaning they pay over 30% of their income towards rent. At last count, there were over 160,000 homeless Californians. The burden of this crisis is disproportionately born by communities of color; according to (CA Department of Housing and Community Development) HCD's 2018 Statewide Housing Assessment, Black and Latinx households are one-third less likely to own a home as White households, and 20% more likely to be rent-burdened.

A major cause of our housing crisis is the mismatch between the supply and demand for housing. According to the Roadmap Home 2030 (Housing CA and California Housing Partnership Corporation, 2021), to address this mismatch, California needs approximately 2.6 million units of housing, including 1.2 million units affordable to lower income households. And according to HCD, the state needs 180,000 units of housing built a year to keep up with demand. By contrast, production in the past decade has been under 100,000 units per year, further exacerbating the housing crisis.

Planning for and Approving Housing Development: 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 power through zoning regulations that restrict and shape development, such as maximum densities of housing units, maximum heights, minimum numbers of required parking spaces, required setbacks, and maximum lot coverage ratios. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

The state's role in housing production is to ensure that cities and counties plan for and approve new housing. Cities and counties are required to complete a housing element as part of their General Plan. Among other things, the housing element must demonstrate how the community can accommodate its share of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element.

Moderate-Density Housing: As discussed above, a major cause of our housing crisis is the mismatch between the supply and demand for housing. This mismatch involves not just the amount of housing, but the type of housing being built. In recent decades, almost all of the housing built in California was large single-family development (which can be an inefficient use of land) and mid- and high-rise construction (which are expensive to build). One strategy to lower the cost of housing is to facilitate the construction of housing types that accommodate

more units per acre, but are not inherently expensive to build. This includes moderate-density typologies such as town homes, duplexes, and four-plexes,

Local zoning restrictions are a barrier to denser housing. According to the UC Berkeley Turner Center's 2019 residential land use survey, in California most jurisdictions devote the majority of their land to single-family zoning, and in two-thirds of jurisdictions, multifamily housing is allowed on less than 25% of land. Many local governments in California are motivated to increase density in these neighborhoods to address the housing crisis, and others are required by state law to do this as part of their Housing Element. However, such upzonings typically face several impediments – one of which is the requirement for the upzoning to be analyzed under CEQA.

New housing typically requires multiple levels of CEQA review, including at the housing element level, for a rezoning that increases development capacity, and for the project itself. This bill would remove the requirement to complete CEQA review when jurisdictions rezone to increase the amount of housing allowed, up to a maximum of ten units, on parcels that are either infill locations and/or near high quality transit. The jurisdiction's decision to utilize the provisions of this bill are voluntary. However, if a jurisdiction decides to do so, this bill enables elected officials to override, with a 2/3 vote, voter initiatives that have restricted the zoning on these parcels.

Parcels upzoned pursuant to the bill cannot be both greater than ten units and benefit from by right approval or a CEQA exemption. This provision could make it more difficult to build projects than under existing law in the instances where a developer could already have built more than ten units on a parcel upzoned by this bill, such as when they assemble multiple parcels or utilize a density bonus. For example, under existing law, supportive housing developments can use a by right process to avoid CEQA review (AB 2162 (Chiu) Chapter 753, Statutes of 2018) and may qualify for additional density that would produce more than ten units (AB 1763 (Chiu), Chapter 666, Statutes of 2019). The Legislature established these benefits to expedite the production of much needed affordable housing units.

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 location 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."

Arguments in Support

Supporters of the bill include organizations that support new housing development. They argue that the bill would maintain local control while helping cities address the state's housing shortage and affiliated burdens on lower income households. According to California YIMBY, the

sponsor of the bill, "SB 10 creates a path to adding modest density to address California's housing shortage, preserves significant local control for local jurisdictions, and makes it faster, less expensive, and less risky for a city to undertake a community process to increase density in our communities."

Arguments in Opposition

Opponents of the bill include cities who are concerned that nearby cities will allow more housing without studying the implications to traffic in adjacent cities. According to the City of Beverly Hills, "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."

Opponents also include environmental justice organizations who are concerned that bypassing CEQA, when combined with project-specific exemptions, could result in housing being built on toxic or polluted land.

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES

SENATE FLOOR: 27-7-6

YES: Archuleta, Atkins, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Laird, Leyva, McGuire, Min, Pan, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Allen, Bates, Hertzberg, Ochoa Bogh, Portantino, Stern, Wilk

ABS, ABST OR NV: Becker, Kamlager, Limón, Melendez, Newman, Nielsen

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-1-1

YES: Chiu, Gabriel, Kalra, Kiley, Quirk-Silva, Wicks

NO: Seyarto

ABS, ABST OR NV: Maienschein

ASM LOCAL GOVERNMENT: 6-1-1

YES: Aguiar-Curry, Lackey, Ramos, Luz Rivas, Robert Rivas, Voepel

NO: Boerner Horvath

ABS, ABST OR NV: Bloom

UPDATED

VERSION: July 5, 2021

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